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CABLE TELECOMMUNICATIONS ACT OF 1983

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 66

TO AMEND THE COMMUNICATIONS ACT OF 1934

FEBRUARY 16 AND 17, 1983

Serial No. 98-11

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CABLE TELECOMMUNICATIONS ACT OF 1983

WEDNESDAY, FEBRUARY 16, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m. in room SR-253, Russell Senate Office Building, Hon. Barry Goldwater (chairman of the subcommittee) presiding.

Staff members assigned to these hearings: Christopher D. Coursen, staff counsel; and Thomas W. Cohen, minority staff counsel.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator GOLDWATER. The hour of 9:30 having arrived, the meeting will come to order.

On March 4, 1982, I introduced S. 2172, the Telecommunications Act of 1982. That bill represented the culmination of a process that began in 1979 when I introduced legislation that contained similar provisions. Extensive hearings were held, but no action was taken in 1979 and in 1980 in the 96th Congress.

In 1981, the Commerce Committee considered a number of communications bills that were passed by the Senate; among those was S. 898 which contained several cable provisions. However, no hearings had been held on those particular sections in S. 898.

Therefore, during the floor debates on that bill, I objected to those provisions because of the commitments I had made that there would be no cable legislation without hearings. I also made it clear that I was not objecting to the substance of the bill provisions in S. 898. My amendment to delete those provisions was successful and they were stricken from the bill.

Shortly thereafter the Commerce Committee held two field hearings on cable. The first was in Seattle, Wash., on January 18, 1982, and the second in Albuquerque, N. Mex., on February 16, 1982. We heard from 20 witnesses, and statements were received for the record from 18 other parties. Much of the evidence accumulated during those hearings helped to formulate some of the provisions in S. 2172. That bill was the result of many months of study on the issues, and was the first time that a comprehensive bill had been introduced on cable.

Hearings were held before the Subcommittee on Communications on April 26, 27, and 28 of 1982. We heard testimony from 54 witnesses, and received statements from about 100 others. After reviewing all of the testimony and meeting with representatives of the cities and the cable industry, S. 2172 was revised. Those revisions were incorporated in a substitute bill which was favorably reported by the Commerce Committee on July 22, 1982, by a vote of 13 to 3.

Unfortunately, there was simply not time to bring S. 2172 to the full Senate for a vote before the close of the 97th Congress at the end of 1982. However, when that fact was evident, I announced my intention to reintroduce a cable bill early in 1983. S. 66 and these hearings fulfill my pledge.

This bill, the Cable Telecommunications Act of 1983, establishes a new title in the Communications Act of 1934 for cable telecommunications, and it is virtually identical to S. 2172, which was the first comprehensive bill ever to be introduced on the subject.

The bill creates a jurisdictional framework which apportions the regulatory authority between the Federal, State, and local governments, and establishes a national policy for the provision of cable. Finally, S. 66 addresses the specific issues of ownership, excess channels, rate regulation, franchise fees, renewals and extensions, protection of customer privacy, criminal and civil liability, and jurisdiction.

I sincerely hope that we are able to achieve bipartisan support for this legislation in the months ahead. I am confident that Senator Hollings and I, and the other members of the Communications Subcommittee, will be able to work together toward that end, so that cable legislation can become a reality this year.

It is my firm belief that we need to establish a national policy for cable this year if that industry is ever to realize its full potential. If we do not get legislation soon, and I emphasize this year, the current patchwork system of Federal, State, and local regulation of cable will be too firmly entrenched to undo.

Today, we are going to hear from 12 witnesses who will describe some new technologies and the state of competition in the marketplace for the provision of new services. Many of these new services are already in existence, and the rest will be soon.

It is clear to me that this legislation is more necessary now, based upon the testimony of these witnesses, than ever before. Local governments do not now possess any regulatory authority over these competitive services, only cable is so regulated. And cable will simply not be able to compete with these services if statutory relief is not provided.

I want to submit for the record a statement by Senator Hollings who unfortunately can't be with us this morning.

[The bill and statement follows:]

II

98TH CONGRESS
1ST SESSION

S. 66

To amend the Communications Act of 1934.

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 25), 1983

Mr. BAKER (for Mr. GOLDWATER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Communications Act of 1934.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Cable Telecommunications Act of 1983".

The Communications Act of 1934 is amended by inserting immediately after title V the following new title:

"TITLE VI—CABLE TELECOMMUNICATIONS ACT

"FINDINGS

"SEC. 601. The Congress hereby finds that—

"(1) cable systems are engaged in interstate commerce through the origination, transmission, distribution, and dissemination of broadband telecommunications services;

"(2) the provision of cable telecommunications is of concern to governmental entities; and

"(3) a uniform national policy for cable can serve to eliminate and prevent conflicting regulations in order to allow unhampered growth and development of cable as a competitive medium which will be responsive to and serve the needs and interests of the public.

"PURPOSES

"SEC. 602. The purposes of this Act are to—

"(1) establish a national policy concerning cable telecommunications and to encourage a competitive environment for the growth and development of cable telecommunications;

"(2) establish guidelines for the exercise of Federal, State, and local regulatory authority; and

"(3) allow cable systems to compete in the marketplace on an equal basis with other providers of telecommunications services to the public.

"DEFINITIONS

"SEC. 603. For purposes of this title, the term—

"(1) 'basic service' means the provision of retransmission of broadcast signals which is distributed by coaxial cable or any other closed transmission medium;

“(2) ‘basic telephone service’ means service provided through a switched network capable of providing two-way voice grade communications;

“(3) ‘broadband telecommunications’ means any receipt or transmission of electromagnetic signals over coaxial cable or any other closed transmission medium;

“(4) ‘broadcasting’ means telecommunications by radio intended to be received by the public, directly or by the intermediary of relay stations;

“(5) ‘cable channel’ or ‘channel’ means that portion of the electromagnetic frequency spectrum used in a cable system for the propagation of an electromagnetic signal;

“(6) ‘cable operator’ or ‘cable system operator’ means any person or persons, or an agent or employee thereof, that operates a cable system, or that directly or indirectly owns a significant interest in any cable system, or that otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

“(7) ‘cable service’ means the provision by a channel programer of one-way programing on a per channel, per program, or other basis which is distributed by coaxial cable or any other closed transmission medium, but such term shall not include basic service or public, educational, or governmental service;

"(8) 'cable subscriber' means any person who receives or transmits electromagnetic signals distributed or disseminated by a cable operator or a channel programer over a cable system;

"(9) 'cable system' means a facility or combination of facilities under the ownership or control of any person or persons, which consist of a primary control center used to receive and retransmit, or to originate broadband telecommunications service over one or more coaxial cables, or other closed transmission media, from the primary control center to a point of reception at the premises of a cable subscriber, but such term does not include: (A) a facility or combination of facilities that serves only to retransmit the television signals of television broadcast stations; (B) a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management; or (C) a common carrier subject to the provisions of title II of this Act whenever such carrier transmits broadband telecommunications services;

"(10) 'channel programer' or 'programer' means any person having an agreement to provide basic service, public, educational, or governmental service, or cable service to a cable system operator, or any person who leases, rents, or is otherwise authorized to use the facilities of a cable system for the provision of basic service, public, educational, or governmental service, or cable service, and such term shall include a cable system operator to the extent that such operator, or person or persons under common ownership or control with such operator, is engaged in the provision of such service;

"(11) 'closed transmission medium' or 'closed transmission media' means media having the capacity to transmit electromagnetic signals over a common transmission path such as coaxial cable, optical fiber, wire, waveguide, or other such signal conductor or device;

"(12) 'information' means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols;

"(13) 'law' means any regulation, rule, order, standard, policy, requirement, procedure, or restriction;

"(14) 'person' means an individual, partnership, association, joint stock company, trust, corporation or any governmental authority;

"(15) 'public, educational, or governmental service' means the provision by a channel programer of public, educational, or governmental programing, on a noncommercial basis, which is distributed by coaxial cable or any other closed transmission medium, but such term shall not include basic service;

"(16) 'telecommunications' means the transmission of information by electromagnetic means, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission;

"(17) 'telecommunications service' means the offering of telecommunications facilities, or of telecommunications by means of such facilities but such term shall not include basic service, public, educational, or governmental service, or cable service; and

"(18) 'United States' means the several States and territories, the District of Columbia, and the possessions of the United States.

"STATEMENT OF AUTHORITY

"SEC. 604. The provisions of this title shall apply as follows:

"(1) The Commission shall have jurisdiction and exercise authority with respect to broadband telecommunications in accordance with the provisions of this Act and other applicable provisions of law.

"(2) Nothing in this Act shall be construed as prohibiting any State or political subdivision or agency thereof, or franchising authority, from awarding, in accordance with the provisions of this Act, cable franchises within its jurisdiction.

"OWNERSHIP OR CONTROL OF CABLE SYSTEMS

"SEC. 605. (a)(1) Except in the case of the antitrust laws of the United States and to the extent otherwise provided in subsections (b) and (c) of this section, no executive agency of the United States, including the Commission, shall have the authority to prohibit, directly or indirectly, the ownership of cable systems by any person by reason of that person's ownership of any other media interests, including broadcast, cable, newspaper, programing service, or other printed or electronic information service.

"(2) No State or political subdivision or agency thereof, or franchising authority, shall have the authority to prohibit, directly or indirectly, the ownership of cable systems by any person by reason of that person's ownership of any other media interests, including broadcast, cable, newspaper, programing service, or other printed or electronic information service.

"(b)(1) Notwithstanding the provisions of subsection (a) of this section, for the purpose of ensuring fair and equitable treatment of United States cable enterprises seeking access to markets in a foreign country, the Commission shall have authority to conduct inquiries applicable to foreign persons from that country seeking access to domestic markets in the United States in connection with the construction, ownership and operation of cable enterprises as to whether such United States cable enterprises are permitted fair and equitable access to such foreign markets.

"(2) The Commission shall submit any information obtained through such inquiries to the United States Trade Representative to assist the Trade Representative in his identification and analysis of acts, policies or practices which constitute significant barriers to, or distortions of, United States exports of services.

"(3) For purposes of this subsection, the term 'foreign persons' includes any individual who is not a citizen of the United States, any subsidiary (although established under the laws of the United States or any State thereof) of a corporation or other business entity which was established under the laws of a foreign country, any corporation or other business entity established under the laws of a foreign country, or any corporation or other business entity established under the laws of the United States or any State thereof, if 25 percent or more of the capital stock or equivalent ownership is owned or controlled by an individual who is not a citizen of the United States or by a corporation or other business entity established under the laws of a foreign country, or any subsidiary of a corporation or other business entity established under the laws of a foreign country.

"(c) Notwithstanding the provisions of subsection (a) of this section, a State or political subdivision or agency thereof, or franchising authority, may not acquire an ownership interest in any cable system, unless such State, subdivision, agency, or authority acquires such ownership or interest at not less than fair market value based upon the ongoing business value of the system, including goodwill. In any case in which any such State, subdivision, agency, or authority has or acquires any such ownership or interest, such State, subdivision, agency, or authority shall, in no case, own or control, directly or indirectly, the content of any of the programing on such cable system except as provided in subsections (b) and (e) of section 606.

"ACCESS CHANNELS

"SEC. 606. (a) Each cable system having 20 or more television broadcast channels (120 MHz or more of bandwidth) shall dedicate or set aside access channels for use by public, educational, or governmental programers in accordance with subsection (b) of this section.

"(b) Any cable system operator subject to subsection (a) of this section, shall dedicate or set aside for access, from available channels, 10 percent of such available channels for use by public, educational, or governmental channel programers.

"(c) For purposes of this section, the term 'available channels' means channels actually and technically available for use by the cable operator and not subject to other use requirements imposed by the Commission.

"(d)(1) The obligation to provide access channels imposed under this section shall cease upon determination by the Commission that there are reasonably available alternatives for persons desiring to provide public, educational, or governmental programing service to the public in a particular geographic area or market.

"(2) In determining whether there are reasonably available alternatives in the relevant area or market, the Commission shall consider—

"(A) the number and size of other providers of such programing service;

"(B) the extent to which such programing service is available from other providers;

"(C) the ability of such other providers to make such programing service readily available at comparable rates, terms, and conditions; and

"(D) other indicators of the extent of competition.

"(e)(1) The franchisor is authorized to establish rules and procedures for the use of the channels set aside or dedicated pursuant to subsection (b) of this section.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, until such time as there is demand for each channel full time for its designated use, public, educational, or governmental programing may be combined by the cable system operator on one or more channels, and to the extent time is available on such channels, they may be used by the cable system operator for the provision of other services.

"(f) Nothing in this section shall be construed as prohibiting a cable system operator from making available, in his sole discretion, additional channels to public, educational, or governmental programers.

"(g)(1) In any case in which a cable franchise was awarded pursuant to a franchise agreement prior to January 26, 1983, by any State or political subdivision or agency thereof, or franchising authority, and that agreement provides for a percent of channels for use by public, educational, or governmental channel programers to be dedicated or set aside for access which is in excess of the 10 percent required under subsection (b) of this section, nothing in the provisions of subsections (a) and (b) of this section shall be construed as requiring the modification of such franchise agreement in order to bring such agreement into conformity with such subsections. Except as otherwise provided in accordance with subsection (d) of this section, in no case shall any such agreement be modified, on or after the effective date of this title, so as to provide for the dedication or set aside for access of such channels at a percent less than that provided for in subsection (b) of this section or greater than that provided for in such agreement as of the effective date of this title.

"(2) If the term of any franchise agreement referred to in paragraph (1) of this subsection is renewed or otherwise extended on or after the effective date of this title, the provisions of subsections (a) and (b) of this section shall be applicable to such franchise agreement.

"REGULATION OF RATES AND SERVICES

"SEC. 607. (a)(1) Each State or political subdivision or agency thereof, or franchising authority, is authorized to establish, fix, or otherwise restrict the rates charged by cable operators for the use of channels for the provision of basic service, and public, educational, or governmental service, and charged to subscribers by cable operators for such basic service, and such public, educational, or governmental service.

"(2) The authority to establish, fix, or otherwise restrict the rates charged to subscribers for the provision of basic service set forth in subsection (a) of this section shall cease upon determination by the Commission that there are reasonably available alternatives to basic service programing in the particular geographic area or market.

"(3) In determining whether there are reasonably available alternatives in the relevant area or market, the Commission shall consider—

"(A) the number and size of other providers of such programing service;

"(B) the extent to which such programing service is available from other providers;

"(C) the ability of such other providers to make such programing service readily available at comparable rates, terms, and conditions; and

"(D) other indicators of the extent of competition.

"(b) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of cable services offered over a cable system.

"(c) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of telecommunications facilities offered by or telecommunications services offered over a cable system, except with respect to the provision of basic telephone service.

"FRANCHISE FEES

"SEC. 608. (a) The Commission shall establish a reasonable ceiling for the fees to be paid to a State or political subdivision or agency thereof, or franchising authority, by operators of cable systems receiving franchises from such State, subdivision, agency, or authority and, periodically upon its own motion or upon petition, may review the appropriateness of such ceiling and make adjustments thereto. The Commission shall establish such ceiling so as to permit only the recovery by such State, subdivision, agency, or authority of the reasonable cost of regulation of such cable system.

"(b) The Commission may waive the franchise fee ceiling established in subsection (a) if, upon a reasonable showing, the franchisor can demonstrate that the reasonable cost of regulation exceeds such ceiling and that such waiver will not interfere with the effectuation of Federal goals and policies established pursuant to this title.

"(c) The Commission shall prescribe procedures necessary to carry out the provisions of this section within the 180-day period following the effective date of its enactment.

"RENEWALS AND EXTENSIONS

"SEC. 609. (a) In any case in which a cable system operator submits an application to the franchisor for the renewal or other extension of such operator's franchise authorization, the franchisor shall grant such renewal or other extension if it finds that—

"(1) the cable system operator has substantially complied with the material terms of such franchise and with applicable law;

"(2) there has been no material change in the legal, technical, or financial qualifications of the cable system operator that would substantially impair the continued provision of service by such operator; and

"(3) the services and facilities to be provided by such operator are reasonable in light of the size, nature, needs, and interests of the community to be served, the age and status of the existing system, the current availability of facilities and services in communities of comparable size and characteristics, and the costs of construction and operation of cable facilities.

"(b) Nothing in this Act shall be construed as prohibiting the filing of competing applications for cable franchises, or as prohibiting the award of multiple cable franchises by a State or political subdivision or agency thereof, or franchising authority.

"PROTECTION OF SUBSCRIBER PRIVACY

"SEC. 610. (a) No person or governmental authority shall intercept or receive broadband telecommunications unless specifically authorized to do so by a cable system operator, channel programer, or originator of broadband telecommunications or as may otherwise be specifically authorized by Federal law.

"(b) In order to safeguard the right to privacy and security of broadband telecommunications, such broadband telecommunications shall be deemed to be a 'wire communication' within the meaning of section 2510(1) of title 18 of the United States Code.

"(c) In the event that there may be any difference between the provisions of this section and chapter 119 of title 18 of the United States Code, or any regulations promulgated thereunder, it is the intent of the Congress that such chapter 119 shall be controlling.

"(d)(1) Except as provided in paragraph (2) of this subsection, no cable operator, channel programer, or originator of broadband telecommunications may use the cable system to collect personally identifiable information with respect to a cable subscriber, except upon the prior written consent of that subscriber.

"(2) The provisions of paragraph (1) of this subsection shall not apply to the collection of information solely for billing purposes or to monitor whether there is unauthorized reception of cable telecommunications.

"(3) A cable operator, channel programer, or originator of broadband telecommunications shall ensure that any such information is destroyed when the information is no longer used or to be used for the purposes for which it was collected.

"(e) No cable operator, channel programer, or originator of broadband telecommunications shall disclose personally identifiable information obtained pursuant to subsection (d) of this section with respect to a cable subscriber, or personally identifiable information with respect to the services provided to or received by a particular cable subscriber by way of a cable system, except upon the prior written consent of the subscriber, or pursuant to a lawful court order authorizing such disclosure.

"(f) If a court shall authorize or order disclosure, the cable subscriber shall be notified of such order by the person to whom such order may be directed, within a reasonable period of time before the disclosure is made, but in no event less than 14 calendar days.

"(g) Each cable operator shall, at the time of entering into an agreement to provide cable telecommunications, and regularly thereafter, inform every subscriber of the rights of the subscriber under this section. Such information shall include a description of the nature of the information to be maintained by the cable operator, channel programer, or originator of broadband telecommunications, and the location and availability of such information.

"(h) A cable subscriber shall have access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator, channel programer, or originator of broadband telecommunications. Such information shall be available to the subscriber at reasonable times and at a place designated by the cable operator, channel programer, or originator of broadband telecommunications.

"(i) Any cable subscriber whose privacy is violated in contravention of this section, shall be entitled to recover civil damages as authorized and in the manner set forth in section 2520 of title 18 of the United States Code. This remedy shall be in addition to any other remedy available to such subscriber.

"CRIMINAL AND CIVIL LIABILITY

"SEC. 611. Nothing in this title shall be deemed to affect the criminal or civil liability of channel programers pursuant to the law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that cable operators shall not incur such liability for any program carried on any public, educational, or governmental channel referred to in subsection (b) of section 606, or for any program required by law to be carried on any other channel.".

EXCLUSIVE JURISDICTION

SEC. 2. (a) Except to the extent otherwise specifically provided in title VI of the Communications Act of 1934, as added by the first section of this Act, the Federal Government shall have exclusive jurisdiction over broadband telecommunications regarding matters covered by or otherwise within the purview of such title.

(b) Any law of any State or political subdivision or agency thereof, or franchising authority, in effect on the effective date of title VI of the Communications Act of 1934, as added by the first section of this Act, which is in conflict with the provision of subsection (a) of this section relating to the exclusive jurisdiction of the Federal Government, shall be deemed superseded, as of the effective date of such title, and shall thereafter be null and void and of no effect.

NEW AND ADDITIONAL SERVICES

SEC. 3. Title I of the Communications Act of 1934 is amended by inserting after section 6 the following new section:

"NEW AND ADDITIONAL SERVICES

"SEC. 7. (a) Consistent with sound spectrum management, the Commission shall, to the maximum feasible extent, encourage the introduction of new and additional services by new applicants, existing licensees, or other persons. In any proceeding in which new or additional services are proposed, such services shall be presumed to be in the public interest whenever the Commission finds that such services are technically feasible without causing significant technical degradation to or interference with radio transmissions by other licensees.

"(b) Any person may file with the Commission a petition to establish or an application to offer a new or additional service.

"(c) The Commission must determine whether the new or additional service proposed in a petition or application is in the public interest within 180 days after such petition or application is filed. If the Commission initiates its own proceeding for a new or additional service, such proceeding must be completed within 180 days after it is initiated.".

EFFECTIVE DATE

SEC. 4. The provisions of this Act and the amendments made thereby shall take effect on the date of the enactment of this Act, except that, in the case of any franchise agreement in effect prior to the date of the enactment of this Act, the parties thereto shall have the 90-day period following such date of enactment within which to bring such agreement into compliance with the provisions of this Act and the amendments made thereby.

REDESIGNATION

SEC. 5. The existing title VI of the Communications Act of 1934 is redesignated as title VII, and sections 601 through 609 are redesignated as sections 701 through 709, respectively.

○

OPENING STATEMENT BY SENATOR HOLLINGS

I wish to thank Senator Goldwater first for his gracious words in his statement introducing this legislation and second for holding these hearings to investigate what policy we should establish for cable telecommunications. I too hope that we can achieve a consensus so that cable legislation can move through the 98th Congress. Senator Goldwater and I have worked together frequently and successfully. I look forward to doing so again.

It is no secret that I have serious problems with the thrust of S. 66. I expressed these elaborately in last year's report on S. 2172, Senator Goldwater's previous cable bill. As I stated there, I believe effective competition exists for the services and facilities cable provides. Events since that time have only served to reinforce this view. In such a situation, economic regulation is counterproductive. The correct approach is to end such oversight over cable by all levels of government.

While each of us have certain problems with the communications bills this Committee has produced, we have always shared the fundamental objective: where the market is competitive, deregulate. We took this approach in common carrier legislation, and in each bill established a scheme for deregulation, even for the giant AT&T. In radio broadcast legislation, we have also looked to the marketplace and deregulated certain aspects of radio regulation. If we could establish a scheme to eventually deregulate or deregulate immediately these powerful, incumbent firms, why not do the same for their supposed competition: the cable industry?

Just recently, the Committee published its goals for the 98th Congress. In the communications section, the report stated: "Existing regulatory policy must be replaced by a scheme that allows competition wherever possible, because it is the best means of economic regulation; encourages innovation; and promotes the goal of providing maximum consumer choice."

I hope that cable legislation moves in this direction.

Senator GOLDWATER. With those remarks, I welcome the witnesses today. I ask that the first panel step forward. Mr. Paul Bortz of Browne, Bortz & Coddington of Denver, and Dr. Charles Jackson of Shooshan & Jackson, Inc., of Washington, D.C.

Gentlemen, you have prepared testimony. If you care to submit the testimony for full publication that will be done. I remind you of these little lights up here. As long as the green one is on, no trouble; the yellow one, begin to shake; the red one, cut it. We don't adhere to that too strictly.

Mr. Bortz, you may proceed.

STATEMENT OF PAUL I. BORTZ, MANAGING PARTNER, BROWNE, BORTZ & CODDINGTON

Mr. BORTZ. Thank you, Mr. Chairman. I will submit my full statement for the record.

I appreciate this opportunity to appear before you to testify on the Cable Telecommunication Act of 1983.

I am a managing partner of Browne, Bortz & Coddington. Our economic and market consulting firm has clients in the cable industry, in broadcasting, in common carrier, and in some of the new video technologies that will be competing with cable. I want to emphasize that my testimony here today is personal testimony, reflecting just my own views.

I believe that the bill that you have proposed addresses a number of key issues which are crucial to the development of telecommunication services for the American public. I would like to comment today about certain provisions in S. 66 regarding ownership, access, and rate and service regulation.

Just by way of background, let me emphasize that today cable television competition comes primarily from subscription television, multipoint distribution service, and satellite master antenna systems, or mercifully they have adopted a new name, private cable. Only private cable of these different modes has multichannel capacity. The other multichannel technologies, such as direct broadcast satellites, are not yet in the marketplace.

As I mentioned in my testimony to you last year on S. 2172, single-channel competitors, although performing well over the short term in certain markets, not all markets but certain markets such as Los Angeles, pose no long-term threat to cable and as such are not meaningful competition. Within a few years, I expect that the single-channel premium television services, whether it be STV or MDS, will survive in only a handful of cable markets.

Let me emphasize that multichannel services are a different matter. Private cable, direct broadcast satellite, and multipoint distribution services, if the FCC authorizes a multi-channel service configuration, might in the future provide quite effective competition to cable.

Even without competitive premium television services, though, the challenge of providing cable service in the larger markets of this country is significant. The difficulty of packaging services in a way that will appeal to consumers and develop adequate revenues to cover the costly investments being made by cable companies should not be underestimated, and this is not even in the face of multichannel competition.

With that as background, let me comment specifically on three sections of your bill.

First of all, with respect to ownership and control of cable systems, section 605 wisely recognizes that the prohibitions on the ownership or control of cable systems has no justification in the current television marketplace.

Cable success in the future is going to be achieved by offering a broad array of program services, not by restricting program availability. Given the enormous capital investment required, there should be no concern that an owner with other media interests would operate cable systems in a preemptive way, that is, underdevelop the system so as to minimize the competition with its other media properties. They simply can't afford to do that and there is no need, therefore, for governmental intervention in this particular area.

Also in rural areas, until now they have been limited to a few broadcast television channels and small cable television systems. But in the near future they will have alternative sources of video programing such as direct broadcast satellites. With such competition then, even in smaller markets I believe that ownership restrictions on cable systems serve no public purpose.

With respect to access channels, cable television is and will be the dominant premium television medium in this country and, therefore, some access to systems is important. I think a moderating factor concerning access is that it is in the cable operator's own interest to select a wide array of programing to heighten subscriber appeal. To narrow the base of programing serves only to limit the potential that they have in these urban areas.

Most services for which there is an identifiable public demand will be able to obtain access on large systems. It is the low channel capacity systems, those of 12 to 20 channels, where access is most limited. In those systems, they have a number of "must carry" signals. When you add a few pay television services and basic services, there isn't a lot of capacity left.

As I mentioned last year, however, leased access would create more problems than it would solve, and I am pleased to see that there isn't a provision for leased access in S. 66.

Your provision on access, which provides a modest number of channels available to public, educational or governmental programers, appears to me to be a reasonable middle ground between those who would call for unlimited access, or common carrier status, and those who would want no access at all. If there is public concern about access on a cable system for other than public, educational or governmental programers, then I suggest that Government authorities can provide that access on the channels provided to them through the legislation that you have proposed.

The relaxation of access requirements following a determination by the FCC that there are reasonably available alternatives raises a different issue. I can understand that provision in S. 2172 where we were talking about leased access and the availability of leasing through other systems to programers.

But when I look at it in terms of public, educational and Government programing, I think the definition by the FCC of when such a condition exists could become quite complex and burdensome, particularly on a market by market basis as it is now drafted.

Given the modest access requirements in your bill, I suggest that access requirements remain fixed, and that the FCC not get into the market by market business of determining where there are adequate alternatives. It seems to me that given the unique local position of the cable franchise holder, this concession to public access should not be onerous even if it exists indefinitely.

Let me move on to regulation of rates and services. I think probably no other issue is as crucial to the successful development of cable in major markets as freedom from undue regulation of cable services and the rates charged for those services.

The marketing of cable in larger markets is a complex and ever changing task even in the current situation where cable faces very limited multichannel premium television competition.

Section 607 of the bill restricts rate regulation to basic services narrowly defined as the retransmission of broadcast service. I applaud that narrowing of the definition from the prior legislation. Cable programing services are an area where the cable operator needs substantial freedom in determining how to package and market the cable originated programing, also sometimes defined as basic.

Under your narrow definition of it being the rebroadcast or the retransmission of broadcast services, rate regulation might be proper in areas with limited broadcast services, but it seems to me inappropriate in most larger markets with a number of over-the-air signals.

When cable is eventually subject to multichannel competition throughout a market—I am not talking just about private cable in a few large multifamily complexes—it seems to me that even regulation of basic services as narrowly defined as you have it in the bill is too restrictive.

I suggest that section 607 might be modified to call for the cessation of basic service regulation in the top 50 markets upon a determination by the FCC that adequate multichannel premium television competition exists.

Other than the existing broadcast signals, I find difficult to imagine how reasonably available alternatives to basic service programing will develop, and that is the criterion that is mentioned in your bill as the time at which you can remove that rate regulation. I find it difficult to see how, other than the signals now available over the air, other forms will develop along that line. The result under this section as now drafted, I am concerned, would be continued rate regulation indefinitely into the future.

In summary, local regulation that restricts cable's pricing options and marketing flexibility, and that imposes costly capital and operating cost burdens, can only stifle the development of the cable service to the public. Service innovation and competitive pricing thrive in deregulated markets as we have seen in other industries.

High cost regulatory burdens and governmentally controlled prices in contrast result in inefficient and inadequate services. The result is harm to the consumer, because ultimately the inefficiencies and high cost of regulation will be passed on to the consumer.

In conclusion, Mr. Chairman, I find that S. 66 addresses several major issues affecting the development of cable television in the United States. The bill provides some of the framework for cable television which will allow it to stand or fall in the marketplace on its own merits.

I hope that you find the suggested modifications to sections 606 and 607 helpful in your deliberations. I thank you for allowing me to comment.

[The statement follows:]

STATEMENT OF PAUL I. BORTZ, MANAGING PARTNER, BROWNE, BORTZ & CODDINGTON

Mr. Chairman, I appreciate this opportunity to appear before the Subcommittee on Communications to testify on the Cable Telecommunications Act of 1983.

I am Paul I. Bortz, Managing Partner of Browne, Bortz & Coddington (BBC). Our economic and market consulting firm is active in the cable, broadcasting, common carrier and related new technologies areas. BBC is involved in cable television consulting, particularly in larger markets and in the design of services competing with cable television.

I believe Senate Bill 66 addresses a number of key issues crucial to the development of telecommunications services for the American public and would like to comment today about certain provisions in the bill regarding ownership, access, and rate and service regulation.

BACKGROUND

The cable industry is entering a period of challenge on two fronts: The expansion of competitive premium television services to multichannel capacity; and the introduction of cable services to households in larger markets, where households already have extensive broadcast service.

Several key provisions of Senate Bill 66 address issues related to these challenges.

Currently, cable television competition primarily comes from subscription television (STV), multipoint distribution service (MDS) and satellite master antenna television systems (SMATV or "private cable"). Only private cable has multichannel capacity. As I mentioned in my testimony before you last year on Senate Bill 2172, single channel competitors, although performing well over the short term in certain markets such as Los Angeles, pose no long term threat to cable and, as such, are not meaningful competition. Within a few years, I expect that the single channel premium television services will survive in only a handful of cabled markets.

Multichannel services are a different matter. Private cable, limited primarily to large multifamily complexes, can provide anywhere from a few channels to "cable size" channel capacities. Direct broadcast satellites, scheduled to be introduced in a limited way, possibly as soon as this year and nationally within four years, will provide several channels of competitive premium television service. Depending upon FCC action this spring, it is possible that MDS multichannel services will be authorized. To a lessor extent, low power television also could be factor in certain markets.

Even without competitive premium television services, the challenge of providing cable service in larger markets is significant. A tremendous challenge is posed in marketing an increasingly complex mix of pay television services such as movies and sports and a wide array of basic cable services ranging from 24 hour news to cultural programming. The difficulty of packaging services in a way that will appeal to consumers and develop adequate revenues to cover the costly investments being made by cable companies should not be underestimated.

Cable television is an evolving business. No one has the magic key to packaging of services that will develop adequate demand in urban cable markets. In each new market, the industry learns more. Pay television packages and pricing that were considered effective in 1981 are, today, often considered obsolete. As in any complex marketing of a variety of consumer products, the packaging and pricing of those products are fundamental to the success of the venture. Fortunately, the proposed legislation recognizes this.

Let me comment specifically on three sections of Senate Bill 66.

OWNERSHIP OR CONTROL OF CABLE SYSTEMS

Section 605 wisely recognizes that the prohibitions on the ownership or control of cable systems has no justification in the current television marketplace. With existing broadcast service and the development of alternative delivery technologies including MDS, low power television, DBS and video cassettes and discs, it is not possible for a cable system to exercise exclusive control of the public's access to video programming. Any attempt to restrict video programming desired by the public will be met in the marketplace by other competitors.

In addition, the tremendous capital investment required to establish urban and suburban cable systems must be recognized. Operators must seek high household penetration of these systems to ensure profitable operation. This penetration will be achieved by offering a broad array of program services, not by restricting program availability. Given the enormous capital investment required, there should be no concern that an owner with other media interests would operate cable systems in a "pre-emptive" way, i.e., underdevelop the system so as to minimize competition with its other media properties.

In rural areas as well, technological development is erasing the concerns that might lead to ownership and control limitations. Within a very short time, every hill and hollow of the U.S. will have access to multiple channels of premium television. Direct broadcast satellites (DBS) and low power television will, of course, be important in providing signals across all of our country. Rural areas until now limited to a few broadcast television channels and small cable television systems, will soon have alternative sources of video programming. With such competition, ownership restrictions serve no public purpose.

ACCESS CHANNELS

Cable television will be the dominant premium television medium in this country and, therefore, access to systems is important. Currently, nonbroadcast alternatives to cable are limited primarily to single channel services—and they are not competitive in the long run. Until viable alternatives are introduced such as DBS and multichannel MDS, some guarantee of access should be provided.

A moderating factor concerning access, as I mentioned earlier is that it is in the cable operator's own interest to select a wide array of programming to heighten subscriber appeal. Because of the natural identity of interest betwen programmers wanting access and cable operators who will have large capacity cable plants, it seems that most services for which there is identifiable public demand will be able to obtain access on large systems; limited channel capacity systems, e.g., 12 to 20 channels, are the ones where access will be most limited. Yet the provisions of Section 606 mandate the greatest access on the largest systems, where access will be the easiest. Small systems often have capacity consumed by must-carry broadcast signals, a pay service or two and a limited complement of basic channels.

Your provision on access providing a modest number of channels available to public, educational or governmental programmers appears to be a reasonable middle ground between those who would call for unlimited access and those who would want no access requirements at all. The relaxation of access requirements following a determination by the FCC that there are "reasonably available alternatives" raises a different issue. The definition by the FCC of when such a condition exists could become quite complex and burdensome on a market by market basis. Given the modest access requirements in the bill, I suggest that access requirements remain fixed, even if alternatives are available. Given the unique local position of the cable franchise holder, this concession to public access should not be onerous.

In sum, Senate Bill 66 strikes a balance between the marketing needs of the cable operator, the program demand of cable subscribers and the desire of those who want public access to those subscribers. A modification that should be considered is leaving access requirements fixed.

REGULATION OF RATES AND SERVICES

Probably no other issue is as crucial to the successful development of cable in the major markets of the United States as freedom from undue regulation of cable services and the rates charged for those services. As I mentioned in the introductory section of this testimony, the marketing of cable in larger markets is a complex and ever changing task, even in the current situation where cable faces only very limited multichannel premium television competition. Sector 607 of the bill restricts rate regulation to "basic services" narrowly defined as the retransmission of broadcast service. Under that narrow definition, rate regulation might be proper in areas with limited broadcast service but seems inappropriate in most larger markets with a number of over-the-air signals. When cable is eventually subject to multichannel competition throughout a market (not just private cable in large multifamily complexes), even regulation of basic services is too restrictive.

Cable operators need the freedom to modify service packages and pricing as the market dictates. The coming introduction of multichannel competition intensifies that need. The package of services effective in one market might differ substantially from the services needed for an attractive package in another market. Both in the selection of the program services and in the pricing of those services, the cable operator must have the flexibility to shape them to the demands of the individual market.

I suggest that Section 607 might be modified to call for the cessation of basic service regulation in the top 50 markets upon a determination by the FCC that adequate (multichannel) premium television competition exists. Other than the existing broadcast signals, I find it difficult to imagine how "reasonably available alternatives to basic service programming" will develop. The result under the section as now drafted would be continued rate regulation indefinitely into the future.

SUMMARY

Local regulation that restricts cable's pricing options and marketing flexibility and that imposes costly capital and operating cost burdens can only stifle the development of cable service to the public. Service innovation and competitive pricing thrive in deregulated markets, as we have seen in other interests. High cost regulatory burdens and governmentally controlled prices, in contrast, result in inefficient, inadequate services; the result is harm to the consumer. Ultimately, the inefficiencies and high cost of regulations will be passed on to the consumer.

In conclusion, Mr. Chairman, I find that Senate Bill 66 has addressed several major issues affecting the development of cable television in the U.S. The provisions of the bill would help in providing efficient and cost effective premium television service to the U.S. public. Senate Bill 66 provides some of the framework for cable television which will allow it to stand or fall in the marketplace on its own merits. I hope you find the suggested modifications to Section 606 and 607 helpful in your deliberations.

I thank you for allowing me to comment to you on the proposed legislation.

Senator **Goldwater**. Thank you very much, Mr. Bortz. Dr. Jackson.

STATEMENT OF CHARLES L. JACKSON, PH. D, SHOOSHAN & JACKSON

Mr. **Jackson**. Thank you very much, Mr. Chairman. I appreciate the opportunity to speak before you today.

My name is Charles Jackson. I am an engineer and computer scientist. I am with a consulting firm here in Washington, D.C., named Shooshan & Jackson. We have a number of clients in the cable industry, the broadcast industry, and the telephone industry, but my comments here today reflect only my own views.

I have a prepared statement. I won't read it, but just try to touch on two points from that statement.

One obvious and straightforward point that is worth mentioning in the context of this legislation is that the same technology which makes it possible to build a modern cable television system with 40 or 50 or 100 channels also allows competitive firms to bypass the system and offer communications services that compete with the cable system. Let me just expand about the nature of the technological alternatives, some of which are in the marketplace today, that are available for bypassing cable television.

Let's look at two particular services. The distribution of video programing, basic television, and also a service which is not very widespread today, but will become more important in the future, electronic text communication—electronic newspapers, electronic mail.

When we look at the video marketplace, television, there are a host of ways of getting TV signals in the households, the most familiar, The most important now, and the most important for a long time to come, is traditional broadcasting

In Washington, D.C., one can take a good TV set and start tuning across the dial, and can pick 14 or 15 stations. There is some duplication of programing among three station because among the stations you pick up; more than one station will be affiliated with a single network. You will get the NBC affiliate in Baltimore as well as the NBC affiliate in Washington. You will pick up several affiliates of the Public Broadcasting Service.

If and when low power TV is licensed in Washington, I would anticipate that 5 to 10 more broadcast stations will be available in Washington, D.C., so that 5 years from now we will have in the neighborhood of 20 over-the-air stations in Washington. Most cable systems today have 20 or fewer channels.

There is another way to get broadcast signals into the household. That is by broadcasting broadcasting on frequencies other than the usual VHF and UHF band. Here in Washington, D.C., Home Box Office is transmitted directly to households on what is called the multipoint distribution service. This is a low power broadcasting service at the high end of the UHF band.

Several firms have applied for and received authority from the FCC to begin broadcast operations from direct broadcast satelites which broadcast at even higher portions in the spectrum, up around 12 gigahertz. In addition, it would be possible, and there is a proceeding now before the Commission, to allocate more of the high UHF spectrum to MDS service. The proposals would result in as many as 15 to 30 new broadcast channels in every community.

The technical limitations on various regions of the spectrum mean that the broadcast service you would get from an MDS station would be different than the broadcast service you get from a conventional VHF station. It would not have the same kind of range because it depends on the line-of-sight propagation. There would be occasional households, located down in a valley, For example, that couldn't get the signal at all or could get the signal only if they put up a very high antenna. But nevertheless, if the Commission authorized multichannel MDS broadcasting, it would be a powerful competitor to any cable system in a community.

It is also possible to do terrestrial broadcasting at even higher frequencies such as the frequencies used by direct broadcast satellites.

There is yet another way to get additional channel capacity. Instead of opening up new bands to broadcast on, we could choose to put more signals through a single broadcast band. Last fall, the General Electric Corp. announced a product, which they called Comm-Band I believe, which compresses two TV signals into one TV channel. They are trying to sell it to the cable TV industry, and I don't know how successful they have been, in order to allow cable TV systems that need to expand capacity slightly, to expand their capacity without rebuilding the whole cable television system.

You can imagine combining this compression technology, which does 2-for-1 expansion, with 30 new channels of multichannel MDS, and 60 new channels capacity over the air. Of course, practical compression systems need not be limited to just 2 or 1 compression factor. Compression factors of 3- or 4-to-1 should be feasible within the decade. That could allow the Commission to authorize three 20-channel broadcasters to compete with local cable companies. I would think that in a situation like that the cable company would find some of those competitors to be quite fierce indeed.

Of course there are other ways that competition can move in on the cable company, too. At some point in the future, we can expect that the telephone company will enhance and improve the local loop that goes to the house from the telephone central office. One way of enhancing it would be to replace the copper wire with fiber optics. Another might to be to reengineer the copper wire for high speed digital communication. Either of those might allow the telephone company to offer competing video distribution service. I think that is farther away, late in this decade or early in the next.

Then, of course, for consumers who want different kinds of programing, there are video discs and video cassettes. There is specialized programing that cable companies either won't carry or don't have the economic incentive to carry. Discs and cassettes are one way to distribute programing which is only of very specialized interest.

Let me look just briefly at another market besides the video market: Data or text communication. The first observation is that the transmission of text requires relatively little bandwidth when compared to the distribution of video signals. Thus, through the use of multiplexing technology, a data broadcast at approximately 10,000 characters per second can be multiplexed into a television broadcast creating a teletext or videotext service.

If you calculate how much text that is, it is a huge amount. A television station carrying text in a vertical blanking interval would carry about 1 billion characters a day. If you broadcast a signal like a newspaper to every household the television chemical has the capacity to carry a large document indeed. Clearly, if you were to transmit documents without any repetition, the home terminal would have to have enough computer power and storage to wait until the information of interest came by over broadcast system and to grab it up and store it in the terminal.

There is an area where cable faces relatively little competition in text communication today and that is in two-way data services. There there is only one competitor right now and that is the phone company.

Currently cable systems, advanced state-of-the-art cable systems, provide data communications capability superior to that provided by the telephone company to the household. It is possible for the phone company to upgrade their data communication system to allow you to have interactive data on your home terminal at the same time you are making telephone calls. Currently, you cannot do that. Making a voice telephone call ties up the line, and you can't use the same phone line for data communications. And data rates on the telephone system are lower than on the cable.

The FCC could authorize a data communications radio service that would allow other vendors to get into the household just as they have allowed businesses to have competitive data communication services by radio, such as the DTS service.

One last observation. When I was preparing my testimony, I went back and looked at some of the massive studies of the cable industry that were done in the late 1960's and early 1970's including the Sloan Commission study and the Rostow report. In none of those reports was I able to find any discussion of direct broadcast satellites, multichannel MDS, or fiber optics as competitors to television. It isn't because the authors of those studies weren't technologically informed or thoughtful. It is just that technology was so limited at that point that it didn't seem like a viable competitor.

Today I have talked about many technologies that compete with and bypass cable television, but I have probably omitted the biggest competitor to cable in the decade of the 1990's because it has not yet been invented.

Thank you for the opportunity to appear here.

[The statement follows:]

Statement of Charles L. Jackson

BY PASSING CABLE

Thank you, Chairman Goldwater, and Members of the Subcommittee for the opportunity to appear before you today. My name is Charles Jackson. I am an engineer and computer scientist. I am currently a consultant with the firm of Shooshan & Jackson here in Washington and I am also an adjunct professor at Duke University. My comments here today reflect my own views.

Let me quickly share with you three observations on cable television: First, the same rapidly evolving electronics technology which made modern cable systems possible has created a host of actual and potential competitors to cable. Nothing indicates that this evolution will stop soon. Just as cable bypasses the local broadcaster or the local telephone company, low-power television, direct broadcast satellites and other technologies will bypass cable.

Second, I am particularly struck by the fact that many discussions of cable policy—particularly the older discussions—treat cable television as if it were an isolated technology, removed from competition and no longer evolving. If one adopts this mistaken assumption, one can be led astray.

Third, I believe that deregulation of the cable industry could lead to significant and long-lasting strengthening of the American electronics industry against international competition.

VIDEO ALTERNATIVES

Electronics and communications technology has changed with enormous speed ever since the invention of the telegraph. The changing technology allowed first, radio broadcasting, then television broadcasting. This technology now allows us to build cable systems capable of carrying 50 or 100 channels of television. It also allows us to build alternatives to cable and, as the technology continues to evolve, we will become able to build additional alternatives to cable.

People usually think of cable as a television distribution service. And it is television service—the distribution of video signals—which provides the vast majority of the cable industry's revenue. Originally, cable began as *the* video distribution facility in communities lacking over-the-air broadcast service. As recently as the mid-1970's, cable was the only practical alternative to traditional television broadcasting. Today, however, there are several methods for local distribution of video signals besides the conventional broadcasters and cable television. These alternatives include the Multi-Point Distribution Service (MDS), Direct Broadcast Satellite Service (DBS), low-power television, and the physical transport of disk and cassettes. Other alternatives are technologically feasible and are awaiting only regulatory approval. And since technological innovation has not ceased, we can reasonably expect other alternatives to be developed in the future.

Television broadcasting remains the primary method for local distribution of video signals. Broadcasting's great advantages over cable are its low cost and universal coverage. Washington, D.C. today has eight full-service television stations, the FCC has just resolved the multiple applications pending for one more full service station. Additionally, many parts of the Washington metropolitan area receive viewable signals from nearby communities. Depending upon how one counts, there are between eight and fifteen over-the-air television signals in the Washington market.

Of course, television broadcasting does not have to be restricted to the familiar VHF and UHF bands. For example, the Multipoint Distribution Service (MDS), created by the FCC in 1972 as a common carrier service, provides television broadcasting at microwave frequencies. MDS requires a direct line of sight transmission path from the transmitter to the receiver antenna. Two channels in each market are currently available for MDS operation. However, the FCC is considering adding more channels to the MDS service. Depending upon the FCC's decision, the number of channels available for MDS could jump to between 10 and 30. In any event, the limitation on MDS as a competitive local video distribution service flows from regulatory decisions—not technology.

If 15 or 20 channels were allocated to MDS and the Commission were to license multiple channels (say, three to five channels) to individual operators, then multichannel MDS operators would become powerful competitors in the pay video markets, since MDS has the great advantage of providing service to a wide area without requiring extensive construction.

Current technology will allow construction of broadcast satellites that can transmit three television channels directly to home receivers. The "footprint" (area served) of a single satellite would cover a single time zone. Of course, satellite broadcasting is not simply a local distribution service like cable. Rather, it combines the long haul and local distribution tasks into a single step.

Last summer, the FCC authorized seven firms to begin constructing direct broadcast satellites to provide service to this country. These satellites will be constructed and placed in orbit over the next five years. It now appears that DBS service to the United States will begin this fall using transmission capacity on the Canadian Anik-C satellite.

Low-power television is a relatively new competitor to cable—although there is nothing really new about it except the FCC's willingness to license the service. Low-power television stations are just that—television stations which operate at reduced power levels which allow them to be shoe-horned into the existing pattern of television stations without creating any interference. Roughly speaking, most isolated small communities may get two or three low-power television stations—if they can support these stations. In some communities however, 10 or 20 low-power stations will be technically possible.

Physical distribution of recorded materials, such as video discs and video cassettes, is another important alternate distribution technology. While it is slower and less convenient than electronic signal distribution for movies, the use of recordings offers a wider choice of materials and scheduling flexibility. In this respect, cable systems are to cassette rental firms as newspapers are to libraries.

Each video distribution alternative I have discussed so far is currently available and can be built with today's technology. But, there is no reason to believe that technological progress in electronics has stopped. Indeed, there is every reason to expect more progress. In particular, technology will be developed to use higher regions in the spectrum. Several groups, among them the Japanese, the French and CBS Inc., have experimented with terrestrial television broadcasting at frequencies near 12 billion cycles per second (12 GHz). There are no fundamental limits preventing broadcast operations at such higher frequencies. It is difficult and expensive today to build radio transmitters and receivers which work at these frequencies. But, that was once true of broadcasting at UHF frequencies. And, it was less than a decade ago that broadcasting at MDS frequencies became technically possible.

Technological innovation is not restricted to over-the-air systems. Improvements in telephone company local loop plant could provide the local operating companies with video local distribution capability. Telephone companies are not restricted to voice services. They can build wideband facilities and offer services to them. Telephone companies already offer a wide range of high speed data and wideband analog services, which are primarily point-to-point private line services. However, some telephone companies also offer point-to-multipoint video services by leasing multiple channels to firms which use those channels to provide cable service. And, of course, Illinois Bell once offered Picturephone services—a switched video service.

As fiber optic technology develops further, it may become an economical replacement for the copper wire pairs now used by the telephone companies. If this occurs, the local telephone system will be capable of supporting full video transmission. "Dial-a-Movie" could replace "Dial-a-Joke". Admittedly, implementation of this possibility lies years in the future.

Technology has expanded the alternatives to cable in other ways than the opening up of new channels as discussed above. Last fall General Electric announced a product, ComBand, which can squeeze two television signals into one television channel. General Electric has aimed its product at the cable industry. But, the biggest impact of its system and similar systems may be on over-the-air broadcast services. Such technology would allow a three channel DBS system to become a six channel system or a five channel MDS system to become a ten-channel system.

ALTERNATIVES FOR ELECTRONIC TEXT

Cable systems do more than just carry television signals however. I will not take the time to consider all the different services cable can provide, but I would like to discuss briefly the alternatives to cable in the electronic distribution of text. The written word is the oldest of the mass media. Electronic distribution of text—whether we call it electronic mail or videotex or electronic funds transfer—will substantially change our communications world. Consider the impact of electronic mail on the Postal Service. Consider the impact of computerized classified advertisements on the economics of newspapers.

Cable provides an excellent way to transmit text electronically—either one way or two way. But, cable has its competitors in this field too—even more than in the distribution of video signals. Any system which can carry a television signal can also carry broadcast text.

Multiplexed broadcast signals provide a major alternative to cable for local distribution of text at low to moderate speeds. Most familiar of these multiplex technologies is the FM subcarrier technique (sometimes called SCA) which allows an FM broadcast to carry a second signal in addition to the normal stereo broadcast. Receiving the SCA signal requires special equipment, and cannot be done by a normal FM receiver. SCA channels have been used for a wide variety of applications including distribution of Muzak, data broadcasting, electronic newspapers and transmission of programming to AM broadcast stations.

The FCC has proposed allowing television broadcasters to use time division multiplexing to insert data into an otherwise unused portion of the television signal. Such multiplexed data transmission capability will be substantial. The FCC's proposal would allow each TV broadcaster to transmit data at an average rate of about 100,000 bits per second or 12,000 characters per second. This works out to more than 3,000 characters of text per day for each household in Washington, D.C. from each television station. If the same text were to be delivered to every household, as with newspapers, one TV channel could deliver about a billion characters per day!

Two way text transmission alternatives to cable are currently limited. The only significant alternative available to households today is the telephone system. But, that alternative is substantial. Far more home computers are hooked into the telephone system than into cable systems. Essentially every home which has cable also has a telephone.

One potential alternative two way text transmission system exists which would offer competition to both the telephone company and the cable companies. That alternative is the creation by the FCC of a new two way radio service for interactive text communication. Such a radio service would require only a small amount of spectrum in order to have enough capacity to provide a realistic competitor to cable systems and the telephone system for text communication. A commercial analog of such a text communication service—although with greater capacity than would be needed for a residential service—now exists and is called the Digital Termination System (DTS) by the FCC.

PREVIOUS LOOKS AT CABLE

It is instructive to look back a decade or so and examine the view informed observers had of cable and its competitors then. For their views of cable's competitive position influenced both their conclusions on the proper regulation of cable and the views many others held of cable's competitive position. One notable view of cable was that of Ralph Lee Smith, author of a survey article first published in the Nation and later reprinted as a book. In Smith's view:

"Cable can bring into homes and into business places audio, video and facsimile transmissions that can provide newspapers, mail service, banking and shopping facilities, data from libraries and other storage centers, school curricula, complete course offerings leading to college degrees, cultural programs, community-originated TV fare, and other forms of information too numerous to specify. In short, every home and office can contain a communications center of a breadth and flexibility to influence every aspect of private and community life.[1]

Ralph Lee Smith's optimistic view of cable's future, a view now more than 10 years old, has not been fulfilled; although we are getting closer every day to realizing the range of communications services he forecast. But many of those services are coming to us not over cable but through technologies Smith never even mentioned.

Smith was hardly alone. When cable emerged, many analysts seemed to believe the ultimate communications invention had arrived: technologists had done their job, society had only to develop rules to regulate cable—the future universal communications highway—and a communications paradise would flourish.

If we look back about a decade to the Sloan Commission[2] and the Rostow reports,[3] we see no mention of multichannel MDS as a competitor to cable. Neither report discusses fiber optics—naturally enough, since practical fiber optics communications systems had yet to be invented.

There is no reason to believe that our vision of our future is better than theirs. While we know of some of the technology which will be available to compete with cable, we don't know about those technologies which haven't been invented yet. We don't know what will be the "fiber optics' of the 1980's or 1990's. At the very least, all the technologies I have mentioned today will be available to compete with cable in this decade and the next. But, it is likely that others will be available as well.

CONCLUDING COMMENTS

The precise evolution of cable will depend in large part upon its regulatory environment. If cable firms are free to enter, explore and test new markets—withdrawing when results are unsatisfactory and staying and profiting when results are good—then cable may well evolve into the major local communications highway some futurists foresee. But, if cable is locked into any market it enters—with cable firms forced to support failing services, while other firms can pick and choose among services—or held to public utility regulation and limited rates of return in the few areas it succeds, in, then it will be significantly handicapped and far less able to evolve to its potential.

One of our nation's great economic strengths is our ability to innovate—to define and develop new products. One good way to improve our ability to compete internationally is to structure our domestic markets so that our inventors and innovators have the opportunity to invent. A deregulated cable industry should prove fertile ground for inventors and innovators who wish to bring new kinds of communications services and products to the public. By inventing products which serve unmet needs in our domestic markets they will create an opportunity for foreign sales and will protect against invasion by foreign products.

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[1] Ralph Lee Smith, "The Wired Nation," Harper & Row, New York 1972, p. 1.

[2] "On the Cable: The Television of Abundance," Report of the Sloan Commission on Cable Communications, McGraw-Hill, 1971.

[3] "Final Report," President's Task Force on Communications Policy, Dec. 7, 1968.

Finally, regulation of cable—like regulation of any communications medium—is especially suspect in our system. There are many alternatives to cable and we can create more if we wish to. The principles of the First Amendment and the wide range of competitive alternatives to cable, present and potential, together argue for the removal of regulation from the cable industry.

Senator Goldwater. Thank you, Doctor, very much.

I have a few questions.

Mr. Bortz, in your testimony, you indicated that you felt cable would be the dominating means of getting signals into the home in the future. Do you believe that this is going to be true when satellite reception becomes more available for the home?

I understand that Comsat will have a dish available, about a 3- to 4-foot dish with a gigahertz receiver, in a matter of not too long, 2 years or so. Do you think that satellite will then dominate the rest?

Mr. Bortz. In my view, cable will be dominant in most of the markets, except for very low density rural areas where direct broadcast satellite could clearly dominate. That is not to say that they will have the market to themselves, they will be facing competition.

In the study that we did last year which looked at competition to cable, we concluded that a competitor that had four or five channels of service to offer—not a single channel competitor, but four or five channels—could in fact meet the needs of a lot of the population. However, unlike direct broadcast satellite which will also be in basically the under-10 channel situation, cable will offer 40, 60, or 80 channels, and they are more likely to have the 4 or 5 channels that an individual household wants.

So we can see competitors coming in and taking 5 percent or 10 percent of the marketplace, certainly enough competition to make sure that the cable operator is providing a wide array of programing and that programing is being provided at a price that is reasonable. But I don't think that any of these other forms of competition, including direct broadcast satellite, will be able to dominate cable with its large number of channels, and its local focus.

I think a key issue is, it is easy to get that signal across the United States with the direct broadcast satellite. In the work that we do in cable and other technologies, what we find is that this is not the problem. The difficulty is how do you market and service individual households locally, and I think cable will continue to have an advantage there. They will be subject to competition, but they will have the dominant market share.

Senator Goldwater. That is an interesting observation because my own personal feeling goes the other way.

I think the quality of cable is excellent. I also think satellite reception can be excellent. Of course, it depends on where you live in the United States as to what you can or can't get from the satellite. It was one of the reasons I felt that it was very necessary that we do something about cable legislation because of the coming of competition other than air-to-air antenna-type television.

I think you have made a very interesting point, and I will be following up on that. If you change your mind at any time, I wish you would let us know.

Mr. Bortz. Fine.

Senator Goldwater. Mr. Bortz, could you please elaborate on the point you make in your testimony that Government regulation results in harm to the consumer?

Mr. Bortz. Yes. As I mentioned last year, when I left NTIA a few years ago, one of the first decisions I made, as I established my own consulting business, was that we would not work with the cities in the franchising process, nor would we be involved with cable companies in the franchising process.

The reason was that we saw the situation cable companies were in. This was a bidding war, and you had to meet the requirements and requests for proposals issued by the cities that called for 100 channels or more, large numbers of access studios, subsidies to various groups within the area.

The reason that I didn't want to participate in that was that I could see that the cities were not going to be moved from that particular course. It was almost a one upsmanship process, "our city will get more than the last city got."

In our studies of how people use television, what they need from television, and our particular sensitivity to the difficulties and the costs of coming up with program services, I was convinced that these proposals would in fact cause the cable companies to overbuild, to put too much into the systems, much more capital investment and operating cost than was desirable.

Those costs ultimately are going to have to be retrieved from the consumer. Therefore, I think that the kind of regulation which says, "You will provide *x* number of channels, and you will provide this kind of a subsidy," increases the cost of doing business, results in an inefficient business and ultimately results in higher costs to the consumer. That is really what I am referring to there.

Senator Goldwater. Thank you, because I believe any government regulation is bad for anybody, I don't care what it is. So I am glad to hear you say that.

Mr. Bortz, if the multichannel services such as private cable and MDS are authorized and widely available, what impact will that have on the cable system entering the same market, and can that cable system compete?

Mr. Bortz. I think certainly that cable can compete. It is our conclusion that, in fact, they will retain the dominant market share.

It remains to be seen precisely how well these other multichannel competitors will do in a given market, and some of it will depend on the marketing skills of the different competitors. I can see in a given market DBS doing very well, and in another market not doing well at all, depending on who is out there selling the product. We are talking about competing in the marketplace.

How well will they do in the face of that, our judgment—this is really based on a judgment, there is no data along that line—suggests that in a market in which there is multichannel competition to cable, we don't expect that multichannel competition in the aggregate to get any less than about 5 percent of the households, probably no more than 20 percent. So we use 10 percent as a benchmark, maybe 10 percent of the households. Cable in that same market might have 40 or 50 percent of the households. So in that sense, they certainly are dominant.

If they attempt to raise prices beyond a level that the consumer thinks is reasonable and the competition can meet, those numbers can change. They will hold the dominant market share, but the others will be there and make sure that we have an effective and an efficient market.

Senator GOLDWATER. Thank you very much.

By the way, I forgot to tell you, Dr. Jackson, and this goes for the rest of the panels, if you want to comment on any of these questions that I ask Mr. Bortz or vice versa, go right ahead. So before I ask you a question, do you have anything that you would like to add to anything that Mr. Bortz has said.

Mr. JACKSON. No, I don't.

Senator GOLDWATER. OK, then we will get to you.

I was very interested in your comments on the fiber optic. I have always called it the "bare-wire system," which you and I know is now available. In fact, I have a hunch that it is coming in on all new telephones. Could you please describe in more depth how the fiber optic or "bare-wire system" works, and how they will be able to offer expanded programing in the future?

Mr. JACKSON. Fiber optic is a fairly new technology. It is about a decade old now. Basically, glass is drawn out in very long, thin threads which are very carefully designed with special impurities in some regions and no impurities in others, so that if a beam of light enters one end of these threads, it continues down, being reflected inside the thread until it comes out at the other end. It is only attenuated very, very slightly as it travels through the thread.

If you shine a beam of light into such a thread of glass and you turn it on and off very fast, you can transmit information with that beam of light. You can make it brighter and dimmer, amplitude modulate the light, and carry a TV signal, and in fact people do that.

The bandwidth of these fibers is enormous, because each different color corresponds to a different frequency. Colors don't have to be very different before they are very, very many megaHertz apart. So the total capacity of fibers compared to the capacity of a coaxial cable system is gigantic. I don't have the numbers on the tip of my fingers, but it is factors of thousands more capacity.

The problem today is getting your hands on that capacity, being able to build tuners that can tune across all those different frequencies. Current systems that use fiber optics tend to use one fiber per one TV channel or two TV channels, or a few TV channels. But the fibers appear to be relatively inexpensive. The basic raw material is sand. They will get less expensive as we get more experience in building them.

It is quite conceivable that 10 years from now, fiber optics will be cheap enough that the phone company will choose to use them to replace the copper wires that now connect us to the telephone company's central exchange. I think that is going to be a long time in coming because the copper wires are in place and they work well for voice communication. They can be upgraded to accommodate to higher speed data communication, but ultimately the fiber optics should replace them.

When that occurs, you will get not only voice but high-speed data and video connections through the telephone company's central office. At that point, you will have an enormously powerful competitor to the cable system, but I think that that is sometime in the future.

Senator GOLDWATER. That fiber optic is a great improvement. In fact, it has been a number of years that the telephone companies have been replacing cable with fiber optics. If my memory serves me correctly, I think 10 centimeters of fiber about a half-inch in diameter stretches out over 150 miles of cable, and it may even be more than that. With the spectrum breakdown as you say, I think it is something like 25,000 different signals that can go over this fiber optic which is about as big around as the wire on a paperclip.

I keep warning my wife that the day is going to come when she is going to have a computer whether she likes it or not, and that it is going to be hooked up with the telephone. She had better learn something about it because I think the day is coming when we will probably use English, but we will be talking computers.

I see the whole of television opening up when you can use this so-called "bare wire" technique out of the house to plug into a screen and get anything you want on it.

A mention was made of newspapers. Do either one of you have any idea how many words are contained in the average newspaper in America?

Mr. BORTZ. I don't.

Senator GOLDWATER. I will ask that question to other sources because it will be interesting to find out. A lot of them, we don't read, but they just print them.

Dr. Jackson, in your opinion, what are the first amendment implications of Government regulation of cable?

Mr. JACKSON. One major part of the tradition of the first amendment is that the freedom of speech and freedom of the press is so important that we must keep the Government's hands off of it. Yet, in electronics communication generally, whether it is the telephone industry, the broadcasting industry, or the cable industry, as the technology developed, radio licensing was needed to control interference. We needed rights-of-way in cities for cable systems. Those necessary regulatory involvements of the government were expanded into substantial regulation of what was done with the communication channels.

It is not necessary, in order to control interference on television, to regulate what the broadcaster transmits. It is not necessary in franchising the cable system to require the cable system to carry some kinds of programing and prohibit others. But because the community, whether it is a municipality or the Federal Government, got its hands on part of the system, they were able to reach into areas normally prohibited to the Government under the principles of the first amendment.

The Washington Post needs licenses for the automobiles and trucks that it uses in its business, but nobody would advocate conditioning the license for the trucks that deliver the Washington Post on a fairness doctrine on the editorial page.

I find the regulation of the electronic media very troubling from a first amendment point of view.

Senator **Goldwater**. I have one more question, if you would care to comment.

Would not allowing any media, whether it be newspapers, magazines, radio, or television, particularly the latter, the right to carry ongoing sporting events like baseball, football, and basketball, because of a possible infringement on copyrights, does that bear on the first amendment in your opinion?

Mr. **Jackson**. I have to beg off on that one. I am an engineer, and I have thought a lot about copyright in other contexts, but I could not answer that one.

Senator **Goldwater**. Would that be your answer, too, Mr. Bortz?

Mr. **Bortz**. No, I would like to comment on that because I feel very strongly. I might also point out that I represent some sports interests, so that is on the table as well.

In putting together a sports franchise and operating that franchise, it is a business like any other business. The performance of that event is part of that business. Fees for the rights for people to see that performance is similar to paying a fee for the performance of a dramatic presentation or copyright when you purchase a book.

In my view, the unlimited spreading of sports programing around—I did notice you not addressing that in this bill, but I was supportive of what you had in S. 2172—I am very concerned that the signal of a sporting event being televised, that its ultimate control should rest with the holder of the rights, and that is the owner of the sports franchise.

I don't believe that it is property which is freely available. People can report on it as a newspaper reports on it, but to take that performance in video form and send it around the country and, therefore, really devalue the rights to the individuals or corporations who own that franchise I think is inappropriate and incorrect.

Mr. **Jackson**. I would like to take my opportunity to expand on that answer. I would just agree with Paul and say, generally, over centuries in our system we have developed a body of law, copyright law for dealing with ownership of ideas—ownership of songs, of dramatic performances, of movie scripts.

We have made a strange aberration in the broadcast industry and basically abolished our traditional idea of copyright with regard to the dealings between cable systems and television systems and the owners of the copyrighted materials put on television systems.

I think that that aberration is an error and ultimately, either through the workings of the marketplace or through congressional recognition of the unfairness of that decision, we will have to move back to a full liability mechanism for all materials that are transmitted over cable systems. When that happens, we will have exactly the circumstances that Mr. Bortz is referring to.

Senator **Goldwater**. Thank you, gentlemen, both of you, for your testimony. It is very valuable. You can be excused.

The next panel, panel No. 2, please come forward, Mr. James Parker, senior vice president and general counsel of CBS; Mr. Richard S. Bodman, president of Satellite Television Corp.; Mr. Don

Franco, president of Microband; Mr. John Raines, chairman of National Satellite Cable Association; and Mr. Robert Fountain, vice president and chief operating officer of the U.S. Satellite Broadcasting Co.

Gentlemen, you may be seated. If you have prepared texts and wish to comment on them, we will make the full text a part of the record. I remind you of the little lighting system we have up here. I think you are all acquainted with that.

Let's start off in the order that we called you. Mr. Parker, you may proceed.

STATEMENT OF JAMES K. PARKER, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, CBS INC.

Mr. **Parker**. Mr. Chairman, I would like to express my appreciation for being invited here today.

I would appreciate it if the written statement that I have submitted could be entered into the record.

Senator **Goldwater**. It will be done.

Mr. **Parker**. As you indicated, I am the senior vice president and general counsel of CBS. My area of interest covers our technology development as well as the general corporate planning.

It is our position that there is very real competition today in the video world. That competition includes television and cable. We feel ourselves to be in direct competition for audience, in direct competition for the procurement of programing, and to a lesser degree in direct competition for the sale of advertising.

We also believe that the video marketplace is impacted significantly—like any other marketplace—by potential competition, because so long as a competitor may be able to come into your marketplace, your pricing actions and your general provision of service will be impacted by that potential competition. We see the video field and the video marketplace in general becoming very rapidly more competitive.

We would also like to point out that the regulatory policies of the Government significantly impact the actual and potential competition. One of the big differences over the last few years has been the deregulatory efforts of the Government.

I can just point out the All-Channel Receiver Act, for example, that helped UHF become genuinely competitive in the broadcasting field, the efforts that have been made to deregulate cable and allow it to expand and become very competitive indeed, and the deregulatory efforts that permitted that satellite receive-only Earth stations, which were referred to earlier. We have an application pending now to operate a multichannel MDS service, that again—with regulatory permission—will be additional competition.

We applaud the decision to allow license lotteries which facilitated the issuance of low power TV licenses.

Finally we applaud the DBS service that is being permitted.

On the technological front there is the new technology of video cassettes and video discs. I would say on video discs that besides the of provision of standard entertainment, they are also a very suitable vehicle for providing data. One video disc can have the capacity for providing an entire set of books. It is a tremendous potential way to communicate to the homes.

We are also very interested and we see competition being enhanced by teletext and videotext. As you may know, CBS is currently conducting a videotext test in Ridgewood, N.J., in conjunction with American Bell. We believe that that is a very interesting potential market.

With respect to an earlier comment about multichannel MDS service, there is indeed—as Dr. Jackson mentioned—the possibility of certain households being shadowed and unable to receive, because the house is in too much of a valley, without building a very high antenna. Similarly, DBS will have certain shadowing problems where the antenna is at an angle that will be blocked by trees, buildings, or the like.

We think that there will be, as a practical matter, very small, little cable systems developed, where there may be a single receive dish with the signal being distributed over five or six or eight homes nearby. This not only will overcome the technical problems, but it will also facilitate a cost reduction in the home receiver and will tie into the marketing.

We think, in essence, that there is increasing competition. Therefore, we are supportive of the efforts to deregulate cable. We think that it is in the American public's interest to see active competition without impediments.

Thank you very much.

[The statement follows:]

STATEMENT OF JAMES K. PARKER, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, CBS INC.

Mr. Chairman and Members: The main purpose of this hearing, as I understand it, is to determine the extent to which cable television service is and will be subject to effective competition from other media. The answer to this question, of course, requires analysis of the marketplace. But policy determinations—past and future—also play a crucial role in video markets. In fact, it has been the Federal Government that in the past has essentially determined the extent of video marketplace competition. Today federal as well as state and local governments continue to play an important policy role.

CABLE MARKETS

Cable television systems offer a number of different services and thus compete in a number of different markets. It is not always appropriate to generalize about these markets, and in any event, one should focus on the market or markets most relevant to the analysis of the particular policy issue at hand. There are, for example, both national and local "markets for ideas" that are relevant to the analysis of First Amendment issues. Cable systems compete in such markets with a number of other media, both video and print. Similarly, cable television serves as a transmission conduit for entertainment services that compete among themselves and with other media for viewers' time and money. Some cable services compete in local or national advertising markets. Still other cable services either already do, or are likely to, compete with services previously the monopoly domain of local telephone companies.

These cable markets are not isolated from each other. Cable systems must take account of the interrelationships among the markets they serve, just as we at CBS are forced to do. For example, as competition from such new media as cable, pay-television networks, and video cassettes erode our ability as a broadcast network to penetrate the markets for viewers attention, we lose ground to our nonvideo competitors in advertising markets—radio, newspapers and magazines. By the same token, those viewer-supported services such as HBO, that use cable as a transmission medium become better and better potential competitors of the broadcast networks in advertising markets as their audiences grow. They are, of course, already essentially comparable to the broadcast networks in their ability to compete for creative product, because of their much greater revenue per viewer.

MEASURING COMPETITION

There are a number of ways to measure competition in video markets and each has its strengths and weaknesses. Some of these approaches are illustrated in the material I am submitting for the record and in the statistics that CBS and others compiled on the variety of new video outlets. It is clear, for example, that the larger the number of independent outlets or channels, the greater the opportunity for competition and diversity. But merely counting firms, channels, or outlets is not by any means a sufficient method of measuring competition. An industry with only a few firms—a so-called oligopoly—may be highly competitive and economically efficient in its behavior, while another industry with many firms may have little effective competition. The broadcast network industry a decade ago is a good example of the former situation while the trucking industry before deregulation is a good example of the latter.

Although structure and behavior are both important, the structure of an industry has an important impact on the competitive behavior of its firms. In any case, the real measure of competition is the ability of firms in an industry to successfully raise prices above competitive levels. This power will be slight or nonexistent if consumers have available alternatives of equivalent quality or if such alternatives could readily be provided by new entrants. Even a firm that happened to have 100 percent of some business, for example, may have little or no market power if there are many other firms that could and would readily enter the business to take advantage of a profitable opportunity created by noncompetitive pricing. It is therefore important to examine not just the picture reflected in statistics or market shares, but to assess the dynamic potential for entry of new competition. In markets that are subject to rapid technological change, and equally drastic regulatory change, as in the case of video markets, this dynamic perspective is an essential element of competitive analysis.

Because behavior is constrained by structure, an industry that is structurally competitive is one in which consumers need not depend on the goodwill or the good behavior of suppliers to ensure competitive performance. Competitive benefits to consumers are guaranteed by the market incentives facing suppliers. Noncompetitive or inefficient behavior in a competitive market is punished by the marketplace itself. Today's video entertainment business is just such a marketplace.

VIDEO MARKETS ARE STRUCTURALLY COMPETITIVE

Video markets are structurally competitive. Consider the business of distributing entertainment programs to consumers. In this industry, television stations and networks that depend on advertising revenue must compete for programs and for viewers not merely among themselves but with cable television networks, pay and free; with prerecorded video cassettes and discs; with subscription television stations and networks; and with MDS channels. Further competition is about to be introduced from direct broadcast satellites and low-power television stations. As a result, any lessening in program quality, any lowering of prices offered to program producers, or any increase in advertising rates by broadcast stations or networks would result in immediate competitive advantages for the alternative media. Although the new media are so recently arrived that they still have comparatively small dollar shares of the business, they would grow even more rapidly if advertiser-supported media did not compete vigorously. This actual and potential competition from the new media effectively constrains firms in the video marketplace to behave competitively. From a technical point of view, there is now—as there was not a few years ago—substantial demand and supply-side elasticity in video media markets. The customers (viewers and advertisers) served by broadcast networks have numerous alternatives, as do program suppliers. As a result, most media outlets now face highly elastic demand conditions in their sale of advertising and their search for viewers and equivalent competitive conditions in the markets from which they buy programs and program rights.

CHANGING POLICY AND TECHNOLOGY

It is not difficult to find the reasons for the changing structure of the video industry. In the late 1960's, local VHF network affiliates and the networks that supplied them were virtually alone in the video marketplace. Entry, both by new broadcast stations and by alternative technologies, had been blocked by FCC policies designed to achieve other goals. While networks and stations in that period certainly competed vigorously among themselves for audience, program materials, and for advertising dollars, there was no chance that others could readily enter if competitive vigor were to slacken.

There have been some important economic changes in the past decade. General economic growth has changed the demands of advertisers and viewers in the markets served by video media. But the most important changes have involved policy decisions to unleash new technologies or new markets:

(i) Detent tuning, the All-Channel Receiver Act, and cable carriage have, for example, nearly eliminated the old "UHF handicap." As a result, there has been a tremendous increase in the number of economically viable local independent broadcast stations.

(ii) Perhaps even more dramatic has been the simultaneous growth of cable television and the many cable networks. There are now dozens of pay or free network services and "super stations" seeking to tap the television audience via abundant cable channels. The economic demand for such outlets may have been present for some time, but it was only as a result of the FCC's decisions to deregulate over-the-air and cable pay television and to deregulate cable television distant signal retransmission that the tremendous competitive power of this new medium was unleashed.

(iii) Similarly, the FCC's decision to deregulate satellite receive-only earth stations led to the birth of satellite supplied master antenna television ("SMATV") for multiple unit dwellings, and the authorization of medium powered satellites (intermediate in strength between the conventional C Band communications satellites and the higher powered direct broadcast satellites of the future) will accelerate the growth of SMATV's. An attached chart based on census data shows that, as long ago as 1970, more than 6 million families lived in buildings containing 10 or more units, all of which should be candidates for SMATV service.

(iv) The FCC is in the final stages of a rule making proceeding which could allocate spectrum for multi-channel MDS service. This would enable cable type program services to be delivered at a low unit cost to center city residents who either lack access to cable or who seek a price competitive alternative.

(v) Low power television service, whose implementation depended upon last year's decision by Congress to authorize license lotteries, will bring many channels of service to small towns and rural areas.

(vi) The Commission's decisions to authorize DBS service, and to permit transponder sales, removed remaining entry barriers in the video marketplace.

Technology is providing still other forms of competition:

(a) Video cassettes and discs will deliver video programming while by-passing communications media altogether.

(b) Teletext and videotex will provide new ways to deliver information and advertising to homeowners.

Teletext and videotex deserve a brief explanation. Teletext is a system for delivering a number of still frames of text and graphics via the vertical blanking interval on television signals or over full channel cable or broadcast facilities. The householder selects which frame is desired, a frame-grabber in his teletext system picks out the frame from among those broadcast of cablecast generally, and that frame is displayed on the home television set.

Videotex on the other hand is a two communications system where the viewer directs the videotex computer which still frame of text and graphics is desired and that frame is delivered to the viewer's television screen. (Both signals are delivered via a telephone line, a cable channel, or other telecommunications means.) Videotex is an interactive system enabling the householder to select the material of interest to him from a potentially limitless quantity of information stored in a videotex computer. The householder can obtain specific information about products and services that are offered by vendors, and ultimately can order these products and services directly through the videotex system. The system thus has enormous capacity to serve as an advertising vehicle in the broadest sense, since it can deliver detailed product information to a potential consumer at the time that the consumer wants such information. As such, videotex, and to a lesser extent teletext, can compete with television and other media in the sale of advertising, although videotex and teletext will probably work most efficiently when used in combination with video and print media.

There was not long ago a colorable claim that FCC policies, undertaken in the name of spectrum scarcity, have created concentration and entry barriers in broadcasting. But in a few short years, the Federal Government has reversed field in communications policy, with the result that there is no longer any structural basis for the existence of market power in video media markets. Scarcity, if it ever truly existed, has been eliminated.

CABLE TELEVISION COMPETITION

Most of my remarks have been directed at competitive conditions in video markets on the national level. Much of this analysis also applies in local markets. But local conditions do vary, and there may be less structural basis for competition in small local markets than in large ones, simply because smaller markets can support fewer outlets. Local policy can also have important effects. Cable franchisees must necessarily compete with conventional as well as other new media. But local franchising policy may determine the extent to which cable systems compete with potential entrants into their own business.

Notwithstanding the potential differences between national and local regulatory issues, on balance it seems to be in the public interest to have a controlling federal policy for cable television, rather than have policy determined on a state or local basis. The production of first run narrow-casting programs for cable will be principally a national market. Well produced programs are simply too costly to be produced for any economic unit smaller than the entire nation if directed (i.e., narrowcast) to a relatively small group of viewers with common tastes or interests. With the focus on a narrow potential audience, it is important to have a wide geographic scope. Put another way, a program which is potentially appealing to 5 percent of the audience, will be more likely to be produced if it can be exhibited to 5 percent of the entire nation than if restricted to 5 percent of a particular locality. Similarly, a substantial amount of advertising will be national, and not local. Federal regulatory policies for cable will maximize the effectiveness of cable as a competitor in acquiring programming of interest to viewers and as a telecommunications competitor, and will maximize the ability of cable to compete even more effectively for national advertising and for viewers. This added will serve the interests of the American public.

CONCLUSION

Mr. Chairman, it is the position of CBS that technological and policy changes over the past few years have eliminated whatever elements of market power once existed in video media markets. Actual and potential competition from the new media and the old provides viewers, advertisers and program producers with effective and economical alternatives among which they can choose freely. Cable television services, like broadcast networks and other video media, are competitive and growing more so.

SUPPLEMENTARY STATEMENT OF JAMES K. PARKER, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, CBS INC.

In this statement CBS provides the Committee with an overview of today's video marketplace. Each of the products and services in this market strives for a fraction of consumer's leisure time and disposable income. Most also strive for the budgets of advertisers. The various products are substitutable by consumers because they are essentially the same products delivered by different media. Advertisers analyze the relative performance and price of these various media in allocating their advertising budgets. Similarly, the creative community chooses to write, produce or design programs (of "software") for the different media according to their particular interests, audiences and budgets. CBS feels strongly that the video marketplace of today is healthy, diverse, competitive and robust.

As illustrated in Table 1, subscription television stations, multipoint distribution-services, videocassette recorders and videodisc players and other technologies are proliferating and prospering. In the past year alone, the number of video outlets in the largest U.S. cities has grown at an impressive rate despite the adverse effects of a recessionary economy.[1]

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[1] In addition to the material submitted herewith, the committee is referred to the National Association of Broadcasters, "New Technologies Affecting Radio and Television Broadcasting" x-xi (Nov. 1981) ("NAB Report"), a copy of which is attached as appendix I. For an explanation of the methodology employed in compiling the data presented in table 1, see appendix II, infra. (The appendices have been retained in the committee files.)

Continued dramatic growth in the video marketplace is virtually assured by recent technological, economic and regulatory developments, including the FCC's elimination of major restraints on the subscription television service, authorization of low-power television stations and approval of several direct broadcast satellite applications. Moreover, proposals currently pending before the FCC, including one to assign additional channels to the multipoint distribution service, hold the promise of further expanding the viewing options available to consumers.

TABLE 1. STATUS OF VIDEO OUTLETS: 1982

	Cable					
	Percentage of homes passed	Average number of channels	MDS channels	Total UHF and VHF channels	Video cassette recorders	Radio stations
1. New York	40	31	3	14	392,800	39/78
2. Los Angeles	24	24	5	18	253,548	32/73
3. Chicago	5	34	2	12	181,676	39/67
4. Philadelphia	29	28	6	11	146,239	30/44
5. San Francisco	64	27	3	12	119,786	28/52
6. Boston	23	25	3	9	115,294	21/50
7. Detroit	5	31	3	8	101,818	23/38
8. Washington, D.C	9	27	1	9	89,840	20/40
9. Cleveland	30	27	3	6	85,348	21/32
10. Dallas-Forth Worth	2	38	2	9	83,351	20/39
11. Pittsburgh	49	15	1	8	74,867	22/37
12. Houston	25	26	2	5	78,360	26/35
13. Minneapolis-St. Paul	5	29	1	6	66,881	27/35
14. St. Louis	4	22	1	6	62,888	21/37
15. Seattle-Tacoma	41	23	3	7	66,382	26/47
16. Atlanta	12	35	1	6	66,382	23/32
17. Miami	28	35	2	9	67,879	17/37
18. Tampa-St. Petersburg	44	21	2	8	57,398	13/33
19. Baltimore	14	30	1	6	52,906	22/28
20. Denver	2	27	1	5	53,405	22/32
21. Indianapolis	19	23	2	7	48,913	20/24
22. Sacramento	23	21	2	6	49,911	18/24
23. San Diego	79	32	2	4	42,424	19/34
24. Portland	2	18	3	5	48,414	24/33
25. Kansas City	37	29	1	6	42,424	16/31
26. Hartford	69	33	2	7	47,915	12/28
27. Cincinnati	17	43	1	7	42,923	19/27
28. Milwaukee	9	25	1	7	41,426	19/25
29. Buffalo	53	28	1	5	37,433	16/18
30. Nashville	10	32	1	5	39,929	17/24
31. Phoenix	10	32	5	8	44,920	20/33
32. Columbus	52	21	2	4	35,437	15/19
33. Providence	15	32	1	5	33,440	13/19
34. Memphis	19	36	1	5	34,938	20/23
35. Charlotte	19	16	1	7	36,934	13/16
36. New Orleans	23	32	2	5	35,936	23/25
37. Greenville, S.C	30	22	1	8	33,939	11/17
38. Grand Rapids	42	19	2	5	34,439	17/18
39. Oklahoma City	29	34	1	7	32,442	17/24
40. Orlando	43	23	1	5	36,435	12/24
41. Raleigh	24	24	2	5	33,440	11/20
42. Louisville	5	21	1	6	31,943	16/22
43. Charleston, W. Va	34	14	0	6	31,943	10/13
44. Birmingham	29	26	1	5	29,447	20/23
45. Salt Lake City	13	25	6	6	31,444	19/24
46. Harrisburg	64	17	1	7	27,451	8/17
47. Norfolk	41	30	1	6	29,947	13/31
48. Wilkes-Barre	54	20	0	4	28,449	6/22
49. Albany	59	27	1	4	27,950	12/22
50. Dayton	62	29	1	5	28,948	12/19
64. Des Moines	44	32	1	4	21,961	14/14

TABLE 1. STATUS OF VIDEO OUTLETS: 1982—Continued

	Cable		MDS channels	Total UHF and VHF channels	Video cassette recorders	Radio stations
	Percentage of homes passed	Average number of channels				
75. Springfield	49	27	1	6	19,465	9/10
100. Waco	62	12	1	3	12,977	8/8
125. Eugene	59	12	0	2	9,982	13/15
150. Odessa	60	12	1	4	7,487	9/14

Source: See exhibit C, infra, for a discussion of the methodology used in compiling this table.

HISTORICAL AND FUTURE DEVELOPMENT OF MEDIA TECHNOLOGIES: AN OVERVIEW

In the pages that follow, the post-1970 development of each of the services mentioned above is summarized and the anticipated future growth in video programming outlets is projected through 1990. While estimates in this field understandably vary to some degree, there can be no doubt that the video marketplace of the 1980s is extraordinarily competitive and diverse. Similarly, as demonstrated in Table 2, the rate of growth in these services appears to be increasing.

TABLE 2. AVAILABILITY AND USE OF ELECTRONIC MASS MEDIA: 1970–90

[In millions]

	1970	1975	1980	1982	1986	1990
Number of TV households	59	70	78	83	90	97
Basic cable:						
Homes with access	9	20	35	45	75	82
Subscribers	5	11	19	28	41	58
Pay cable:						
Homes with access		4	26	[1] 42	[1] 70	[1] 76
Subscriptions		0.5	9	23	46	65
STV and MDS:						
Homes with access		3	22	35	49	59
Subscribers		NA	1	3	6	8
Low power TV:						
Homes with access				NA	0.4	10
Subscribers				NA	.36	0.8
Direct broadcast satellite:						
Homes with access					72	97
Subscribers					2	11
Videocassette recorders:						
Homes with access		70	78	83	90	97
Owners		.3	2	5	13	15
Videodisc players:						
Homes with access			78	83	90	97
Owners			.02	0.3	3	7
Videogames:						
Homes with access		70	78	83	90	97
Owners		NA	11	15	22	29

[1] In 1982, 93 percent of the television households passed by basic cable had access to at least one pay cable service. Assuming that the basic-to-pay ratio remains constant through 1990 (a conservative estimate given the anticipated expansion in channel capacities, see supra pay cable will be available to 70 million households in 1986 and to 76 million households in 1990.

NA=Not available.

Sources: Donaldson, Lufkin & Jenrette, "Industry Viewpoint: Cable '82" at 7, 9, 35 (Oct. 1982); Paul Kagan Assocs., Inc., "Cable TV Databook" 36, 51 (1982); Media Science Newsletter, June 1–15, 1982, at 2; Doyle Dane Bernbach, Inc., "The Media Scene: What Will It Look Like?" 11 (1982); Television Digest, Inc., "Television Factbook," Services Vol., at 79–a, 83–a (1981–82 ed.); Titsch Publishing, Inc., "Cablefile" 93 (1982); Paul Kagan Assocs., Inc., "MDS Databook" 13 (October 1982).

Table prepared by Alan Pearce, Ph. D., Jan. 18, 1983.

1. Conventional, over-the-air broadcasting.—Not all of the increase in video service available to the public is attributable to the development of "new" technologies. The number of over-the-air broadcast facilities also has grown substantially and many television stations have diversified their services. As shown in Table 3, the total number of operational broadcast stations has increased by 28 percent since 1970. As a result, 97 percent of all television households now receive four or more over-the-air television signals, and almost two-thirds of all television households receive seven or more signals.[2] Moreover, as shown in Figure 4, the number of independent stations increased from 77 in 1970 to 179 in 1982.

TABLE 3. TELEVISION STATIONS ON AIR: 1970–83

Year (Jan. 1)	Total VHF	Total UHF	Total commercial	Total Educational	Grand total
1983[1]	633	472	812	293	1,105
1980	625	386	734	277	1,011
1978	617	365	716	266	982
1976	608	352	701	259	960
1974	605	333	697	241	938
1972	598	308	693	213	906
1970	581	281	677	185	862

[1] As of Dec. 13, 1982.

Sources: Television Digest, Inc., "Television Factbook", Services Vol., at 75–a (1981–82); TV Digest Weekly, Dec. 20, 1982, at 1.

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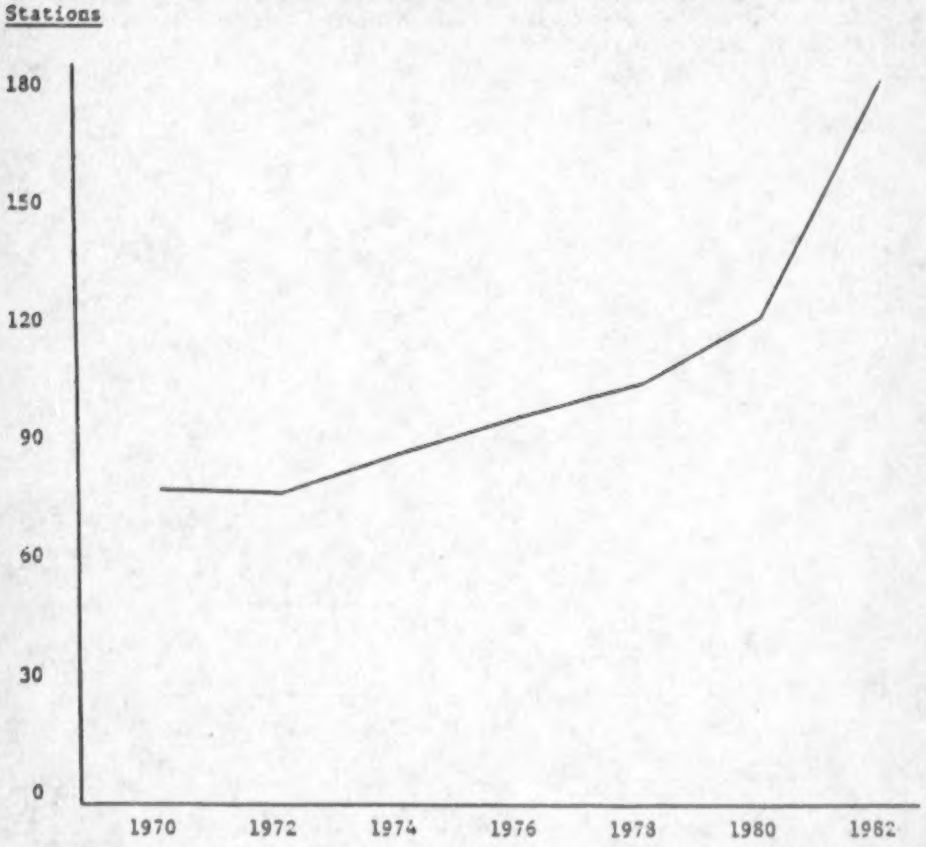
[2] 1982 notice, 47 Fed. Reg. at 32964 n. 18 (citing "FCC Policy on Cable Ownership," supra, at 62–64; "Nielsen Television Report" (1980)). For an analysis of the growth in television stations since 1949 see Appendix III.

FIGURE 4

Growth in Number of Independent Stations: 1970-1982



Sources: FCC Annual Reports 1970, 1971, 1975; FCC Television Broadcast Financial Data 1980; Association of Independent Television Stations

The future of independent broadcast services has been enhanced by the FCC's recent deregulation of STV.[3] These actions stimulated rapid expansion of the STV industry as evidenced by the growth in subscriber levels charted in Figure 5. Following the agency's most recent decision,[4] some observers predict that the industry will experience substantial growth in the next two or three years as a result of the opening of 133 new markets for STV development.[5] As summarized in Figure 6, even those experts who formulated their STV projections prior to the deregulation of STV anticipated substantial increases in the number of television households that will receive STV service in 1990.[6]

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[3] Report and Order, 43 Fed. Reg. 15322 (1978) (eliminating limitations on sports and movie programing, as well as a ban on commercial advertising). As noted above, the DC Circuit previously had invalidated parallel rules governing pay-cable services. Thus, in its 1978 decision, the Commission concluded that it was obligated to equalize the competitive positions of the similarly situated STV and cable services. See also First Report and Order, 44 Fed. Reg. 60091 (1979) (lifting rule providing that only one station per market could engage in STV operations).

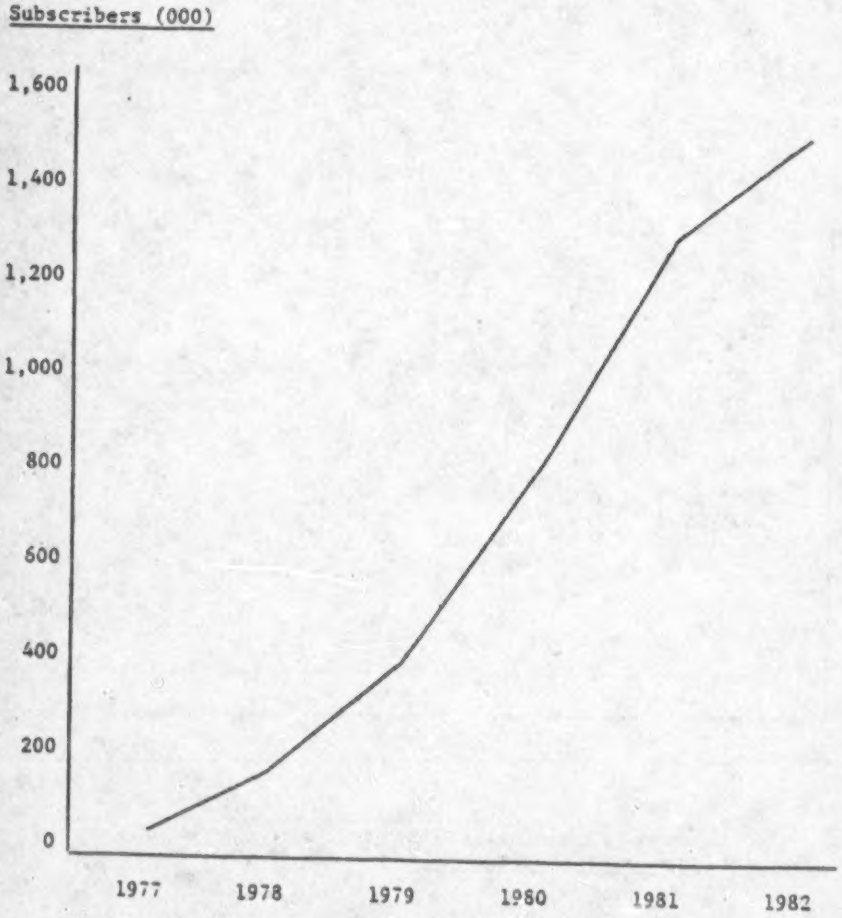
[4] In June 1982, the Commission ruled that it will entertain STV applications in every U.S. market, and no restrictions will be placed on the amount of subscription programing aired. Third Report and Order, 47 Fed. Reg. at 30072–73. In addition, operators will no longer be burdened with the costs of conducting ascertainment surveys, and the option of selling decoders will provide entrepreneurs with a new source of capital for establishing STV stations. Id. at 30075.

[5] See "Both Bulls and Bears on STV," Broadcasting, June 21, 1982, at 23 (reporting predictions that industry will reach four million subscribers in the next two or three years). See also NATPE Programer, October 1982, at 10 predicting five million STV subscribers in 1986).

[6] Some have questioned the ability of STV to compete with cable and other multi-channel services. See "Both Bulls and Bears on STV," supra. However, one study has shown that an existing STV station can compete through the use of aggressive marketing and programing techniques. In their study of STV and cable operators in the Los Angeles market, Browne, Bortz & Coddington found that "[s]ubscription television has been able to attract a relatively large number of subscribers, even in areas where cable television is available." Browne, Bortz & Coddington, "The Impact of Competing Distribution Technologies on Cable Television 8 (Mar. 8, 1982).

FIGURE 5

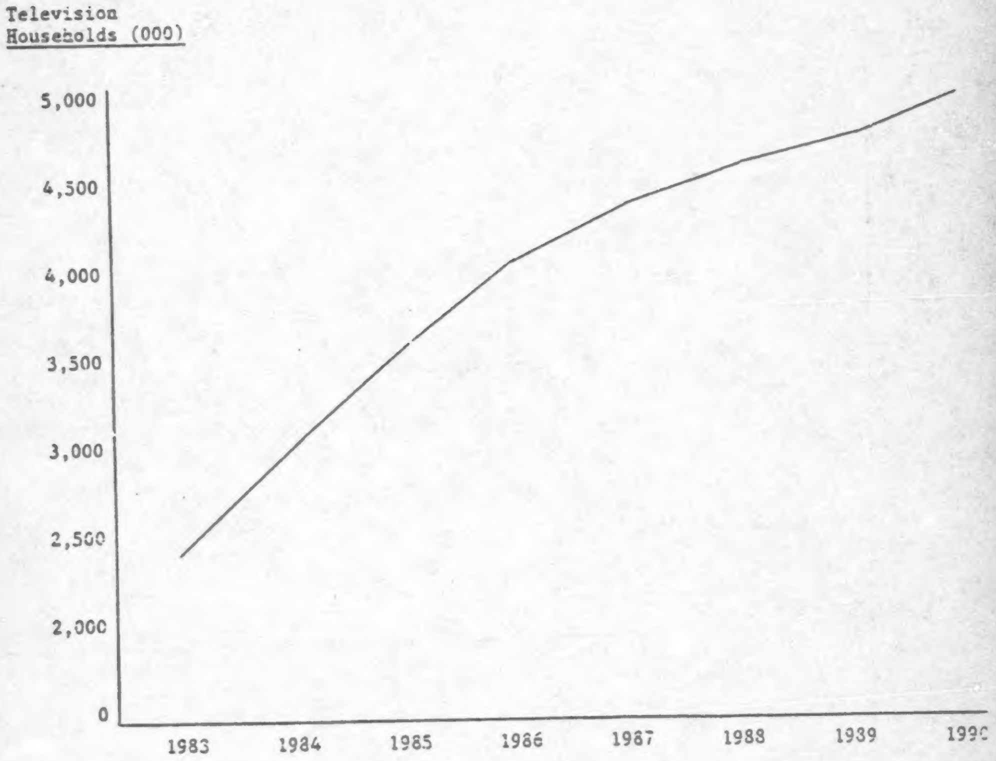
STV Growth: 1977-1982



Sources: Paul Kagan Assocs., Inc., *Cable TV Databook* 51 (1982); Donaldson, Lufkin & Jenrette, *Industry Viewpoint: Cable '82* at 35 (Oct. 1982); Subscription Television Association

FIGURE 6

Projected Growth of STV Subscribers: 1982-1990



Source: Media Science Newsletter, June 1-15, 1982, at 2; Donaldson, Lufkin & Jenrette, *Industry Viewpoint: Cable '82* at 9, 13 (Oct. 1982).

2. Multipoint distribution service.—In early 1974, the Commission adopted rules governing MDS, a common carrier service which uses microwave signals to distribute video and other material to subscribers.[7] although the Commission allocated two channels adequate for the transmission of standard television signals via MDS in each of the top fifty markets, operations have been authorized on only one channel in most markets. Typically, MDS operators lease most of the time on their single-channel systems to pay-program suppliers and, to date, most MDS subscribers have been hotels and apartment buildings.

As indicated in Table 9, while the rate of MDS growth in its first five years was relatively slow, the number of new MDS stations per year has increased recently as a result of a 95-percent drop in the cost of necessary reception equipment (from $1,500 to below $100).[8] As of mid-1982, there were 85 operational MS systems, the Commission had issued construction permits and/or licenses for an additional 266 systems, and hundreds of MDS applications were pending at the Commission. Furthermore, MDS subscriptions have increased substantially in the past few years [9] as inexpensive MDS equipment has become available for residents of single-family homes.

TABLE 9. GROWTH OF MDS: 1973–82

Year (June 30)	Operating stations	Licenses issued	Construction permits granted [1]	Applications pending	Mutually exclusive applications
1982	85	119	147	494	325
1981	69	63	155	690	471
1980	57	37	122	620	427
1979	42	25	66	510	359
1978	35	21	74	371	293
1977	22	16	94	389	311
1976	17	5	65	480	445
1975	11	3	51	483	461
1974	4	2	18	402	320
1973			23	359	314

[1] No licenses issued.

Source: Paul Kagan Assocs., Inc., "MDS Databook" 64 (1982).

Some sources predict that MDS will reach 3.2 million homes in 1990 [10] but the future of MDS may be greatly enhanced if the Commission approves pending proposals to increase the number of channels available to the service. In 1980, the Commission proposed to reallocate the 2500–2690 MHz band so that MDS could share the spectrum with two other services that currently occupy, but do not fully utilize, the frequencies. Under the Commission's plan, MDS would be allocated 10 channels on a primary basis and would have access to any of the remaining 21 channels that are not used by the other services in a particular market.[11]

Two years after the agency initiated its rulemakings, Microband Corporation of America filed an alternative to the Commission's plan, proposing that 14 channels be made available for MDS in each of the top fifty markets.[12] The most significant aspect of Microband's "Urbanet" proposal is that control of channels in each market would be aggregated; two operators would be awarded five channels and one would receive four. According to Microband, the creation of four- and five-channel systems would enhance the competitive position of MDS vis-a-vis multi-channel cable systems and subscription television services.[13]

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[7] Report and Order, 45 FCC 2d 616 (1974), recon. denied, 57 FCC 2d 301 (1975). Prior to the adoption on the 1974 rules, the Commission had issued a number of MDS construction permits to applicants whose proposals were neither inconsistent with the FCC's proposed rules nor mutually exclusive with other pending applications. See Notice of Proposed Rulemaking, 34 FCC 2d 719, 723 (1972); Paul Kagan Associates, Inc., "MDS Databook" 49 (Oct. 1982). However, pay-TV did not become a significant part of MDS service until after the promulgation of the 1974 rules.

[8] See "NAB Report," supra at 6; "DLJ Report," supra at 59.

[9] Paul Kagan Associates, Inc., "MDS Databook" 13 (Oct. 1982); "DLJ Report" supra at 35.

[10] See e.g., Media Science Newsletter, June 1–15, 1982, at 2.

[11] Notice of Inquiry and Proposed Rulemaking, 45 Fed. Reg. at 29330 ¶ 49 (frequency allocation). The Commission also has proposed new adjacent and co-channel interference standards, as well as the establishment of a protected service area for MDS, in order to permit full use of the second channel assigned to MDS in each of the top 50 markets. Notice of Inquiry and Proposed Rulemaking, 45 Fed. Reg. at 19351–52 ¶¶ 9–14 (MDS licensing procedures).

[12] Proposal of Microband Corporation of America for the Creation of Urban "Wireless Cable" Networks, Gen. Dockets 80-112, 80-113 (Feb. 10, 1982) ("Microband Proposal").

More recently, Contemporary Communications Corporation ("CCC") filed an application seeking reassignment of four to eight unused channels currently allocated to the Instructional Television Fixed Service.[14] On these frequencies, CCC proposes to conduct a three-year experiment in five markets of a multi-channel video service ("MCS") with programing to be supplied by CBS. MCS would use co-polarized transmissions on adjacent channels to improve spectrum efficiency and signal quality over levels currently achieved by MDS systems.

The Commission has not yet ruled on these various multi-channel proposals. A favorable decision, however, would permit significant expansion on MDS service within a short period of time. Microband estimates that it could construct multichannel systems in all top 50 markets within two years,[15] and the CCC proposal contemplates initiation of experimental service by mid-1983.[16] Pending the Commission's ruling, it is difficult to estimate the precise impact of increased channel capacity on the future development of MDS. However, some projections indicate that multi-channel MDS systems would attract six to twelve million viewers by 1990.[17] Whatever the precise figure, it is clear that MDS will continue to strengthen its market position as a competitor for viewers and product over the next few years.

3. Low-power television.—Another in the series of post-1970 video developments has been the deregulation of the traditional translator service, permitting the prospect of low-power television ("LPTV") service. For years, translators have served rural and remote parts of the country that cannot receive directly the signals of full-power stations. However, until recently, the function of translators has been limited to the simultaneous retransmission of full-power UHF or VHF signals. With the Commission's adoption of LPTV rules in May 1982, the regulatory-restrained role of the translator was expanded to include program origination and sale of advertising or subscription services.[18]

The ability of LPTV stations to compete with other emerging video media will depend on the timing of LPTV's entry into individual markets, the then-existing penetration levels of cable, STV and MDS, and the effectiveness of attempts to differentiate LPTV service from other options available to consumers. All of these variables make it difficult to estimate future growth of the service with accuracy. Nevertheless, the overwhelming response to this new opportunity in broadcasting indicates that many entrepreneurs are confident about LPTV's future; as of late 1982, over 7,900 LPTV applications were pending at the FCC.[19]

Although many of the proposals are mutually exclusive, LPTV service promises to make several new channels of programming available. As shown in Table 10, applications have been filed for eight or more LPTV channels (excluding mutually exclusive filings) in 94 percent of the top fifty markets and, in half of the top fifty markets, authorizations have been sought for eighteen or more LPTV channels.

Table 10. Cumulative number of LPTV channels applied for in major cities in the top 50 ADI markets: December 1982

Number of channels: [1]	Number of markets
29	1
27	3
25	5
24	7
23	13
22	15
21	17
20	19
19	21
18	25
17	28
16	32
15	34

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[13] See Broadcasting, Feb. 15, 1981, at 31.

[14] Applications of Contemporary Communications Corp. for Developmental Authorizations to Establish Multi-Channel Systems, Gen. Dockets 80-112, 80-113 (Aug. 2, 1982).

[15] See Broadcasting, Feb. 15, 1982, at 32.

[16] See "DLJ Report," supra, at 60.

[17] Broadcasting, Aug. 9, 1982, at 30; Microband Proposal, supra Appendix B-1 at 4.

[18] Report and Order, 47 Fed. Reg. 21468 (1982).

[19] Broadcasting, Jan. 3, 1983, at 22.

14	35
13	37
12	38
11	41
10	43
9	46
8	47
7	48
6	49
3	50

[1] The number of channels listed has been adjusted to eliminate mutually exclusive applications. For two reasons, the number of channels listed may be underestimated because the number of mutually exclusive applications within each ADI may be overestimated. First, it was assumed that all applications for the same or adjacent channels within each ADI were necessarily mutually exclusive. Second, Berry Best Services lists license applications by the city or town where the station would be located. Arbitron Television's City Book was used to assign cities and towns to ADIs. This listing is not exhaustive, and many locations from the Berry Best listing could not be assigned to any ADI. To the extent some of the cities and towns which were not listed in the City Book are in a top-50 ADI, the number of channels applied for in those markets will be underestimated.

Source: Berry Best Services, Ltd., "Low Power Applicant List" (Dec. 1982).

4. Videocassettes and videodiscs.—Two other major new entries into the home video marketplace are videocassette recorders (VCRs) and videodisc players (VDPs). While VCRs have been on the market for only seven years, and VDPs for only four years, these systems have become increasingly popular means of delivering video programing to the home. Estimates suggest that annual sales figures for VCRs and VDPs may now exceed the billion-dollar mark.[20]

Of the two systems, the VCRs are currently the more popular. Since 1975, when VCRs were first introduced, an estimated three million units have been sold,[21] and industry experts predict that, by 1990, sales will reach 15.3 million, a 510 percent increase.[22] VDPs are also solid competitors in the home video marketplace. Since VDPs were introduced in 1978, consumer demand has increased steadily. In 1982, consumer demand has increased steadily. In 1982 alone, 300,000 VDPs and 1.8 million videodiscs were expected to be sold.[23] By 1990, these sales figures are expected to reach 4.8 million and 30 million, respectively—increase in both VCR and VDP sales of approximately 1,500 percent.[24] VCRs and VDPs are becoming more sophisticated, more versatile and more portable, and the retail price of these units is falling drastically.[25] Competition is driving the cost per hour of playing time and the prices for prerecorded tapes and discs down, increasing the playing times of the tapes and expanding the number and variety of titles for sale and rent.[26] As further innovations and cost reductions in hardware and software are realized, these systems will come within the economic reach of a larger number of television households.

As Figure 7 shows, the growth in demand for these systems is expected to continue, thus assuring that the VCRs and VDPs will provide a major in-house alternative source of programs for television viewers in the future.[27]

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[20] "Chasing the Aftermarket," Cablevision, Nov. 1, 1982, at 20 (quoting International Resources Development, Inc.).

[21] Doyle Dane Bernbach, Inc., "The Media Scene: What Will It Look Like?" 11 (1982) ("DDB Media Scene"); see NAB Report, supra, at 27. Video Week reports that, as of Nov. 12, 1982, almost 5 million VCR's had been sold. Video Week, Nov. 29, 1982, at 10. This figure includes united in dealers' inventories, as well as those re-exported.

[22] See, e.g., "DDB Media Scene," supra, at 11.

[23] Id. at 12.

[24] Id.

[25] "NAB Report," supra, at 26–27.

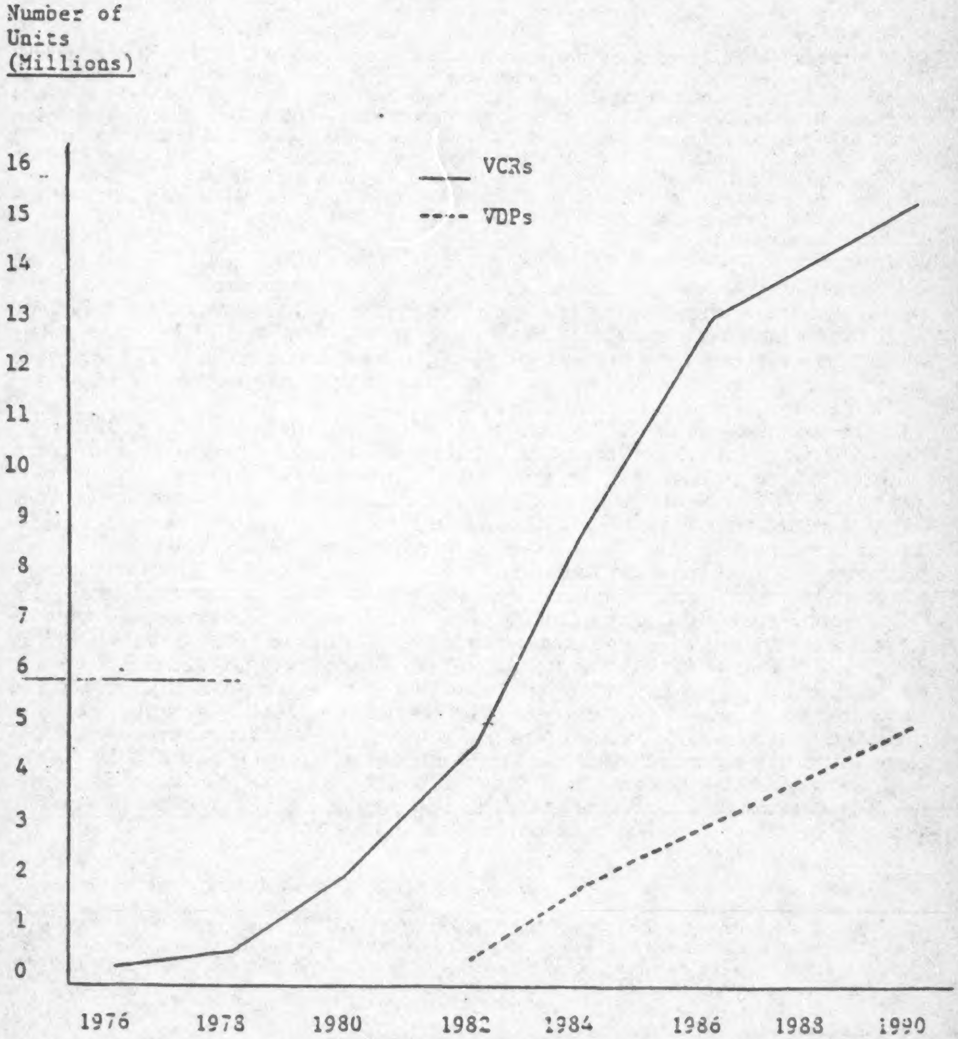
[26] A prerecorded cassette usually costs between $50 and $60, however, recent titles ("Star Trek II: The Wrath of Khan;" "An Officer and a Gentleman") have been released at $39.95. Videodiscs usually sell for approximately $25. See id. at 26.

[27] Some industry experts predict that, by 1990, there will be a VCR or VDP in approximately 40 percent of all television households. See 1982 Notice, 47 Fed. Reg. at 32964 ¶ 36.

There is a serious issue as to the legality under copyright laws of off-the-air taping for private home use without compensation to the copyright owner, in a suit against Sony, a manufacturer of videocassette recorders, and several other defendants. The trial court held in favor of Sony, but the Ninth Circuit reversed, concluding that off-the-air taping infringed the studios' copyrights in their films and programs and was not a fair use of the copyrighted material. *Universal City Studios, Inc.* v. *Sony Corp.*, 659 F. 2d 963, 971–72 (9th Cir. 1981). On Mar. 12, 1982, the Supreme Court granted Sony's petition for certiorari. 50 U.S.L.W. 3982 (1982) (No. 82-1687). Whatever the Supreme Court's decision, it is likely that home recording will continue on some royalty-bearing basis.

FIGURE 7

Cumulative Sales of VCRs and VDPs: 1976-1990



Sources: Doyle Dane Bernbach, Inc., The Media Scene: What Will It Look Like? 9 (1982); Television Digest, Inc., Television Factbook. Services Vol., at 79-a (1981-82 ed.)

5. Satellite master antenna television.—As noted above, the Commission's deregulation of earth stations has encouraged the proliferation of satellite-delivered programming services and has played a key role in the rapid expansion of cable television. In addition, the easy availability of low-cost receiving equipment has created a new sub-industry; satellite master antenna television ("SMATV," "mini-cable" or "private cable").

SMATV offers improved reception of local signals and satellite-fed programming services to apartments, hotels and other multi-unit buildings. Like cable, SMATV provides consumers with multiple channels of programming (typically 15–20 channels), but SMATV enjoys significant cost advantages over cable.[28] The relative ease of entry into the field permitted private cable to "take off" in 1982,[29] near the end of the year, approximately 500,000–800,000 homes were passed by SMATV systems and the number of subscribers was estimated at 100,000–250,000.[30]

The future of SMATV is promising. The industry is targeting eleven million U.S. homes located in apartment buildings with five or more units.[31] In addition, while some programmers in the past refused to deal with SMATV operators, premium services and "hybrid" networks are turning to SMATV as another source of revenue.[32] Finally, while SMATV will face stiff competition from other distribution media, it has the advantages of addressability and low-cost installation.

6. Direct satellite broadcasting.—In 1982, the Commission adopted rules to govern the direct broadcast satellite ("DBS") service and authorized the construction of eight DBS systems.[33] DBS involves the transmission of video signals from orbiting satellites directly to small earth stations installed on residential rooftops and other similar locations. DBS systems have nationwide coverage areas and, unlike cable, the costs of delivery are not related to population density.

While each DBS permittee has a different marketing strategy for its DBS service, all of the approved systems share one characteristic: they will offer multiple channels of program service to homes throughout the country. As shown in Table 11, the authorized systems will introduce 29 new channels of service and that number could be doubled if all pending DBS applications are granted.

TABLE 11.—AUTHORIZED AND PROPOSED DBS SYSTEMS: NUMBER OF CHANNELS AND SERVICE START DATES

Company	Number of proposed channels (fully implemented systems)	Proposed service start date
Permittees:		
CBS Inc	3	late 1980's
Direct Broadcast Satellite Corp	6	mid-1985
Graphic Scanning Corp	2	1986
RCA American Communications, Inc	6	[2] 1986
Satellite Television Corp	3	[2] 1986
U.S. Satellite Broadcasting Co., Inc. (Hubbard)	3	mid-1980's
Video Satellite Systems, Inc	[1] 2	1986
Western Union Telegraph Co	[1] 4	1985
Applicants:		
Advance Inc	7	[3] 1984

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[28] "DLJ Report," supra at 62; SMATV News, Sept. 15, 1982, at 2 (start-up costs for 300-unit complexes estimated at $35,000); SMATV News, Aug. 2, 1982, at 1 (unlike cable, SMATV operators usually do not pay local franchising costs).

[29] See SMATV News, Aug. 2, 1982, at 1.

[30] Id.; telephone interview with J. Mansell, SATV News (Nov. 29, 1982).

[31] See SMATV News, Aug. 2, 1982, at 1 (citing 1979 U.S. Census Bureau study). In addition, most of the new construction in this country is in multi-unit structures. See "DLJ Report," supra at 62.

[32] SMATV News, Nov. 5, 1982, at 1; SMATV News, Oct. 15, 1982, at 1.

[33] Report and Order, 90 FCC 2d 676 (1982); Memorandum Opinion and Order, File No. DBS-81-01, FCC 82-427 (released Oct. 13, 1982); Memorandum Opinion and Order, File Nos. DBS-81-02-09, FCC 82-498 (released Dec. 3, 982). In establishing the new service, the Commission encouraged free entry into direct satellite broadcasting and stressed the need to avoid the placement of unnecessary regulatory obstacles in the path of DBS development. See e.g., Report and Order, 90 FCC 2d at 706–07 at 78. See also Letter from Malcolm Baldrige, Secretary of Commerce to Robert E. Lee, Acting Chairman, FCC (Apr. 7, 1981) (supporting prompt introduction of DBS service).

TABLE 11.—AUTHORIZED AND PROPOSED DBS SYSTEMS: NUMBER OF CHANNELS AND SERVICE START DATES—Continued

Company	Number of proposed channels (fully implemented systems)	Proposed service start date
National Christian Network	4	NA
Oak Satellite Corp	[1] 12	[3] 1988
Satellite Development Trust	3	[3] 1986
Satellite Syndicated Systems	6	[3] 1986

[1] During their interim phases of operation, the Video Satellite, Western Union, and Oak Satellite Corp. systems will offer 1, 2, and 6 channels, respectively.

[2] ETZ: Eastern Time Zone.

[3] Dates provided by applicants (assumed issuance of construction permits in 1982).

NA=Not available.

Sources: Broadcasting, Nov. 8, 1982, at 40; Communications Daily, Aug. 3, 1982, at 2; DBS applications on file at the FCC, Gen. Docket No. 80–603; DBS News, Aug. 1982, at 3, 8, 9.

It will take some time to ascertain the precise impact of DBS on the video marketplace because more than three years are required to construct and launch sophisticated direct broadcasting satellites. However, the Commission is seeking to insure prompt public implementation of DBS by requiring all permittees to begin construction of their systems within one year.[34] Thus, by the middle of the decade, consumers should have access to a substantial number of new satellite programming services.

7. *Electronic test services.*—CBS believes that an examination of competition in the video marketplace must take into account developments in electronic text services, i.e., videotex and teletext. Electronics will provide another means of delivering information to consumers and businesses in the years ahead. Arthur D. Little, Inc. for example, has predicted that by 1990 between 40 and 50 percent of American workers will be making daily use of electronic-terminal equipment. The Little firm predicts that some 38 million terminal-based work stations of various kinds are by then likely to be installed in offices, factories and schools, along with perhaps 34 million home terminals and at least seven million portable terminals resembling today's hand-held calculators. Many of these terminal-based devices might initially be sold and advertised as word processors or videogame machines or personal computers, but the distinctions among those devices are already blurring. By the end of the decade, the incremental cost of equipping such machines with a communications capability will be extremely small. The two most often-discussed kinds of communications capability are videotex and teletext.

You can hear teletext and videotex described as electronic newspapers, printed radio, instant magazines, and computerized catalogs. The chances are that videotex and teletext are all of these things, and more, including electronic mail, electronic banking, electronic shopping and on and on. We can only be sure that they represent a new family of communications media, based on written language, transmitted electronically. They will compete with print, telephone, broadcast, and cable in providing new ways to deliver information.

Teletext is a one-way system, utilizing an unused portion of the broadcast signal to deliver a number of text frames (called a magazine) to every home receiving the basic TV signal. The magazine can include 100 or more screens of information, updated every 10 to 20 seconds. The viewer can access the screens by use of a simple 10-button numeric keypad, attached to a special TV receiver.

What does broadcast teletext offer? It is spontaneous, always there, always up to date. It is personalized. The viewer selects the screens to be viewed. It is simplified. It requires only the numeric keypad for operation. And it is free to the user. Advertisers pay the bill.

Videotex, on the other hand, is a two-way system, connecting a home terminal to a central computer by telephone line or full two-way cable system. The user has a more elaborate typewriter-like alphanumeric keyboard. Like teletext, videotex is spontaneous, always up to date, always there, rain or shine, night or day. It is intensely personal with each user communicating directly with the central computer, getting what he wants, when he wants it, in the order he wants it. It is interactive, permitting the user to send messages, conduct business, and order products and services. But videotex also has its limitation. Like teletext, it contains about 125 words per screen. It is limited in graphics—no photographs, motion or audio. It has a more elaborate typewriter-like alphanumeric keyboard, and people will pay for the service.

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[34] Report and Order, 90 FCC 2d at 719 No. 114.

Obviously, the two systems have unique attributes. Each has advantages and limitations. Each can do some things well, and others badly. How can each compete most effectively for public approval? This depends on how each meets consumer needs. Is it convenient? Is it economical? Is it gratifying? To find answers, we are market-testing both broadcast teletext and videotex. Although our teletext and videotex test results are as yet incomplete, it does seem clear, based on preliminary findings, that these are exciting new media with unique attributes, and that they will achieve mass public acceptance and add to the diversity of information delivery systems. They will become new additions to the media mix, alongside radio, television, print, telephone and cable.

Senator Goldwater. Thank you.

Mr. Richard Bodman, you may proceed.

STATEMENT OF RICHARD S. BODMAN, PRESIDENT, SATELLITE TELEVISION CORP.

Mr. Bodman. Mr. Chairman and members of the subcommittee, my name is Richard S. Bodman. I am president of Satellite Television Corp., which as you all know is an affiliate of Comsat. I am pleased to be here today to bring you up to date on the latest developments with respect to direct broadcast satellites.

Mr. Chairman, if I may, I would like to submit my full presentation for the record.

Senator Goldwater. It will be done.

Mr. Bodman. Thank you very much.

As you know, DBS is a new, highly advanced technology that will permit television signals to be broadcast directly from satellites in orbit to individual homes. STC, a subsidiary of Comsat, was the first company to request and the first company to receive FCC authority to construct a DBS system. Our application was filed in December of 1980 and granted in October 1982, and we expect to begin service to the public on a wide basis in 1986.

Unlike some of the quasi-DBS systems you may have heard about recently, STC's systems will use extremely high powered satellites to deliver crystal-clear signals to the entire country, including rural areas, Alaska, and Hawaii. When I talk about extremely high powered, I want to say that these satellites are over 10 times more powerful than the highest powered satellites in commercial use today. So there is a relatively large technical leap involved.

At each subscriber location, a dish antenna of less than 2½ feet in diameter will receive the signals, and an electronic unit on the television set will descramble them for viewing on a regular TV set.

STC's program service will be subscription supported. Our multiple channels will carry a broad range of programing, including both entertainment and informational material. We will offer our basic service at a cost that is competitive with other pay services.

In addition, we will offer some programing on a pay-per-view or pay-per-series basis. Several service enhancements will also be available, including stereo sound, teletext, closed captioning for the hearing impaired, and a second language audio track.

As the Commission stated when it approved this new service, DBS has the potential to bring enormous benefits to the American people by helping to meet the substantial and growing consumer demand for diversified and specialized television programing.

In particular, DBS will bring improved video service to rural and remote areas that have long been underserved, areas where today there are still millions of homes that receive only one or two television channels, and tens of millions that have no access to subscription television service at all.

DBS will support thousands of jobs in the high technology fields such as satellite construction and consumer electronics, and in the creative endeavors such as program production. Moreover, there is an important international dimension. Today, nations on four continents are building direct broadcast satellite systems, and forecasters see a worldwide DBS market worth billions of dollars by the end of the decade. Rapid development of DBS in this country is necessary to help assure the United States of having a leading role in this burgeoning area of satellite communications.

DBS will also promote competition and bring the concomitant productive benefits in the video marketplace here at home, and to that end, we are proceeding full speed ahead with the construction of our system. Indeed, we have already committed hundreds of millions of dollars to the success of this project. I want to add that up to now we have already spent several tens of millions of dollars in addition to the commitments that we have made.

Last October, we signed a spacecraft contract, and we purchased land in Nevada on which we will build our broadcast center. Currently, we are in negotiations with several home equipment manufacturers and we are building a significant in-house staff to perform the many other tasks that lie ahead to bring our system into being.

In sum, much remains to be done before DBS can become a reality, but STC is committed to bring the benefits of direct broadcasting to the American people.

I thank you for your attention, and I will be happy to answer any questions.

[The statement follows:]

STATEMENT OF RICHARD S. BODMAN, PRESIDENT, SATELLITE TELEVISION CORP.

Satellite Television Corporation (STC) is pleased to have the opportunity again this year to submit its views on the future of the home entertainment and information industry in conjunction with the subcommittee's hearings on cable television and other new media. In particular, STC is pleased to be able to report once again on one of the most promising new developments in home video—direct broadcasting by satellite or DBS. As the subcommittee is aware, DBS is a technology which will make it possible to broadcast multiple channels of television programming directly from satellites in orbit to individual homes, thereby broadening the range of viewing options available to the American public. In addition, the development of DBS will strengthen the U.S. economic position both at home and abroad. STC, a subsidiary of Communications Satellite Corporation (COMSAT), is the pioneer in this field, having been the first company to request and to receive Federal Communications Commission authority to construct a DBS system. STC's application was filed in December 1980 and was granted by the Commission in October 1982. Just prior to that, in July 1982, the Commission published rules governing DBS service generally, and in December 1982, the Commission granted a number of other DBS applications which were filed subsequent to that of STC.

While the Commission's DBS rules and its grant to STC are now being challenged in court, STC is confident that the Commission's orders will be upheld on appeal. In fact, just yesterday, the Court of Appeals denied a motion for stay in our case filed by the National Association of Broadcasters. Accordingly, STC is proceeding full speed ahead with construction of its system, and has already committed hundreds of millions of dollars to the success of this project. Last October, STC signed a $113 million satellite construction contract with RCA Astro Electronics, and in December, we purchased the land near Las Vegas on which we will build our Broadcast Center. Currently, we are in negotiations with several home equipment manufacturers, and we are also building a significant in-house staff to perform the many other tasks that lie ahead. In sum, while much remains to be done, STC is committed to bringing the benefits of DBS to the American people, and it expects to make its service available to the public beginning in 1986.

THE STC PROPOSAL

The Satellite System.—STC's system will include both space and ground segments. The space segment will be composed of operating satellites and in-orbit spares. Initially, STC has received FCC permission to construct two satellites (one operating and one spare) which will be used to initiate program service to the Eastern United States. Subsequently, STC plans to provide nationwide service using a complex of operating and spare satellites. The operating satellites will be spaced 15-20° apart along the geostationary arc.

STC's satellites will represent a major advance in the state of the art over satellites being used commercially today. A principal technical innovation will be their high power; each channel will transmit at a power level 10 times greater than that of the highest powered existing satellites. In addition, a complex shaped-beam antenna system will be used to control the pattern of coverage. These innovations will enable STC's spacecraft to cover irregularly shaped areas while transmitting signals that can be received by small, affordable home antennas.

STC's satellites will make exceptionally efficient use of the frequency spectrum and orbital arc. The design selected permits frequency reuse from satellite to satellite so that each frequency yields a channel nationwide. Satellites of many DBS operators could be co-located with STC's so that consumers would be able to obtain multiple services with a single receiving antenna should they choose to do so.

Transmissions to the satellites will originate at STC's control facility and broadcast center, located near Las Vegas. In addition, the ground segment will include millions of units of home receiving equipment to be installed at customer premises throughout the country.

Subscribers will view STC's programming on their regular television sets. To receive the satellite transmissions, however, each household will need a parabolic "dish" antenna, 2 to 2½ feet in diameter. It will be possible to mount these antennas on rooftops or to place them in any location that has an unobstructed view of the satellite. Because STC's service will be supported by audience subscriptions, the satellite signals will be scrambled to prevent piracy or other unauthorized reception. Accordingly, viewers will also need equipment to descramable the signals and otherwise process them for high quality video reception. This function will be peformed by an indoor electronics unit located close to the subscriber's television set and linked by a cable to the antenna and its associated outdoor electronics.

A unique feature of STC's proposed system is that each home installation will be individually addressable. This will enable viewers to subscribe to selected programs on a pay-per-view or pay-per-series basis.

The Program Service.—STC's program service will consist of multiple channels of diverse entertainment and informational fare that will supplement, rather than duplicate, what is available on conventional television. STC's programming strategy will be characterized by "counterprogramming" and "narrowcasting." To counterprogram, STC intends to provide viewers with a wide range of program choices at all times throughout the broadcast day. In this way, STC will be able to satisfy simultaneously the program preferences of viewers with differing tastes and interests.

The term "narrowcasting" refers to the ability to gather together small groups of viewers who share a preference for various types of special programming. While the program strategies of conventional, advertiser-supported broadcasters necessarily have been directed towards the mass audience, the technology of direct satellite broadcasting permits the aggregation of viewers sharing special interests, even though these viewers may be relatively few in number and scattered across wide areas. Moreover, the economics of subscription television make it feasible for these groups to support the type of programming they desire. STC plans to take advantage of this unique technical and economic capability to serve the broadest possible cross-section of the public's viewing needs, tastes and interests by placing special emphasis on "narrowcast" programming, much of which would not be commercially viable on local or advertiser-supported or subscription television services.

In addition to its basic service, STC will make available a number of valuable service enhancements, including stereophonic sound, teletext, closed captioning for the hearing impaired, and a second language audio track that, for example, will enable subscribers to receive programming in Spanish.

The cost of STC's service will be competitive with other viewer-supported video offerings. In addition to a monthly charge for the basic program service, customers will purchase the home receiving antenna and also will have the option to buy or lease the associated electronics, either from STC or from other sources.

PUBLIC INTEREST BENEFITS OF DBS

As the Commission expressly concluded when it approved DBS service, implementation of DBS, and specifically the STC proposal, will result in numerous important benefits to the public. These benefits include:

A. Satisfying consumer demand for diversified video services.—STC's DBS system will assist in meeting the substantial, and growing, consumer demand for diversified and specialized home video offerings. As the FCC has stated, "DBS has the potential to provide extremely valuable services to the American people." [1] The courts and the FCC have repeatedly recognized the importance of increasing the number of media outlets by encouraging the development of new modes of video delivery.[2] Indeed, it has been said that "there is a *paramount* public interest in fostering competition and diversification of program sources as quickly as possible." [3]

B. Bringing improved video service to rural and underserved areas.—DBS, and STC's system in particular, will advance the fundamental objective of the Communications Act to make modern telecommunications service available "to all the people of the United States." [4] Despite the wide availability of television in our society, there are still millions of homes that receive only one or two channels or which receive no television at all.[5] In addition, tens of millions of homes do not have access to subscription television. Many of these homes are not likely to be served by cable or other terrestrial media in the foreseeable future, but they can be reached by satellite. Thus, DBS will bring rural Americans a major step closer to communications parity with their urban counterparts, and will also benefit those in other areas who are underserved. In authorizing DBS, the FCC emphasized its unique capability to provide video services to rural and underserved areas.[6]

C. Promoting competition in the program distribution market.—The entry of STC and other DBS services will inject a much needed element of competition into the program distribution market. Specifically, such entry should minimize the ability of entrenched satellite-delivered pay networks artificially to hold down revenues to program producers and to increase costs to consumers.

D. Stimulating the production of new programming.—The continued economic health of those who create program material is crucial to the future of telecommunications.[7] STC's DBS system will be an important new outlet for television programming which should attract new suppliers to the program production market and stimulate the creative industries.

E. Enhancing First Amendment values.—The introduction of DBS services like STC's will enhance First Amendment values by furnishing new outlets of communication, diffusing control over the nation's video facilities, and diversifying program service.

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[1] Report and Order, Gen. Docket No. 80–603, 47 Fed. Reg. 31555, 31557 (1982).

[2] See, e.g., *United States* v. *Midwest Video Corp.*, 406 U.S. 649, 667–68 (1972) (plurality opinion); First Report and Order, Docket No. 19671, 86 F.C.C. 2d 299, 303 (1981) (business radio service); Notice of Proposed Rule Making, 45 Fed. Reg. 69178 (1980) (low power TV proceeding); First Report and Order, 20 F.C.C. 2d 201, 202 (1969) (cable television service).

[3] Fourth Report and Order, 15 F.C.C. 2d 466, 536 (1968) (STV service) (emphasis added), aff'd sub nom. *National Association of Theatre Owners* v. *FCC*, 420 F.2d 194 (D.C. Cir. 1969), cert. denied, 397 U.S. 922 (1970).

[4] 47 U.S.C. 151 (1976).

[5] Report and Order, Gen. Docket No. 80–603, 47 Fed. Reg. at 31557, citing estimates based on National Telecommunications and Information Administration data and the 1982 Nielsen Report and Television. See also Office of Plans and Policy, FCC Policy on Cable Ownership, at 62, Table 1 (Nov. 1981).

[6] Report and Order, Gen. Docket No. 80–603, 47 Fed. Reg. at 31557.

[7] See *Geller* v. *FCC*, 610 F.2d 973, 974–75 (D.C. Cir. 1979).

F. Preserving the United States' leadership in space technology.—Nations on four continents are currently planning to deploy DBS systems.[8] The development of DBS in this country, and particularly the involvement, through STC, of its parent COMSAT, will further the key national objectives of promoting advancements in the art of satellite communications and maintaining the preeminent position of the U.S. in the satellite field.[9] Forecasters see a worldwide market for DBS satellites, home equipment and related goods that will be worth many billions of dollars by the end of this decade. As the National Telecommunications and Information Administration has observed: "A vital and expanding telecommunications industry is essential to this nation's future economic well being. We must maintain our lead in technology so that American industry can improve its productivity and strengthen its role in international trade. . . .[10]

G. Stimulating U.S. Economic activity and employment opportunities.—The development of DBS will promote U.S. economic activity in a high-growth, high-technology field which is important to the nation's future. The U.S. Department of Labor estimates that STC's nationwide system alone (not counting other U.S. systems or export opportunities) will support up to 23,000 jobs in diverse fields.[11] Furthermore, STC plans to establish a substantial Minority Enterprise Small Business Investment Company (MESBIC) as one means of ensuring that the economic benefits of its new venture are shared by members of minority groups.

H. Advancing the goals of the Communications Act with respect to new uses for radio.—Under the Communications Act of 1934, the FCC is directed to "study new uses for radio [i.e., the radio frequency spectrum], provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest." [12] DBS is a radio service within the meaning of this provision and one that, only a few years ago, was thought to be technologically infeasible. Moreover, STC's DBS system is not only innovative in itself, but also can serve as a vehicle for the introduction of other technological advances.

Significantly, DBS can provide all the benefits listed above without adversely affecting the nation's existing conventional broadcasting system. All studies done to date clearly show that DBS poses no threat to existing services, and both the FCC [13] and NTIA [14] have also concluded that DBS will have a negligible on existing television stations. In this connection, it should be noted that STC and many other DBS applicants propose pay television services exclusively. Moreover, even though some DBS applicants propose advertiser-supported services, these will supplement, not supplant, conventional television. Cable television has a much larger audience share than DBS will have and it carries both advertiser-supported and subscriber-supported programming. Yet the FCC has found that cable TV does not have a significant adverse impact on conventional television, and that finding has been sustained judicially.[15]

In areas served by cable systems, DBS signals could be received at cable headends and distributed to households via cable as well as by direct satellite-to-home transmissions. In addition, DBS will go "head to head" with cable and compete for viewers directly. Whether DBS, with its relatively limited channel capacity, can compete effectively with cable is uncertain at this time. Obviously, much depends on the ability of DBS to differentiate its product—for example, by offering more attractive programming or by providing a better quality signal. Of equal importance will be the price to consumers of DBS service relative to cable. Whatever the result of the SBS-cable competition, the consumer is certain to benefit from the expanded choice and diversity.

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[8] In Europe alone, seven major DBS systems are in preparation. Japan already has launched an experimental system and now has a second system under construction. In addition, Canada and Australia are considering DBS plans.

[9] See, e.g., National Aeronautics and Space Administration Act of 1957, 42 U.S.C. §2451 (c)(5)(1980); Smith, "Space Policy and Direct Broadcasting via Satellite," in "Symposium on Direct Broadcast Satellite Communications" 85, 86 (National Academy of Sciences, Apr. 8, 1980).

[10] Comments of National Telecommunications and Information Administration, FCC Gen. Docket No. 80-603, 2-3 (Dec. 5, 1980).

[11] This projection was calculated by the Bureau of Labor Statistics using its macroeconomic model of the U.S. economy.

[12] 47 U.S.C. 303(g)(1980).

[13] Report and Order, Gen. Docket No. 80-603, 47 Fed. Reg. at 31562.

[14] Comments of National Telecommunications and Information Administration, FCC Gen. Docket No. 80-603, 21 (Apr. 15, 1981).

[15] Report and Order, 79 F.C.C. 2d 663 (1980) (repealing cable distant signal and syndicated program exclusivity rules), aff'd sub nom. *Malrite T.V., Inc.* v. *FCC*, 652 F.2d 1140 (2d Cir. 1981).

CONCLUSION

DBS, in the words of one expert observer, is a "stunning technology." [16] As a new telecommunications resource for the nation, it has vast potential to stimulate the economy, to satisfy intense consumer demand, and to advance other public interest goals of fundamental importance. For all these reasons, Satellite Television Corporation has accepted the challenge of making DBS a reality.

Senator **Goldwater**. Thank you very much.

Now we have Mr. Don Franco.

STATEMENT OF DON FRANCO, PRESIDENT, MICROBAND CORP. OF AMERICA

Mr. **Franco**. Thank you, Mr. Chairman and members of the committee, for allowing me to testify today.

I am Don Franco, president of Microband Corp. of America. I have previously provided written testimony and I ask that it be included in the record.

Senator **Goldwater**. That will be done.

Mr. **Franco**. I would like now to highlight that testimony and call attention to various aspects of what we think is a very interesting issue.

Only 1 year ago I appeared before this committee on behalf of the fledgling MDS industry to describe the benefits of a nationwide multichannel MDS system. There is nothing new I can add to that testimony for nothing really has changed in this time. But therein lies the problem. Our proposal to expand MDS has been before the FCC for 7 years now, and unless the FCC acts soon to expand MDS into a full-fledged wireless cable system, we believe there will be infinitely less competition to cable in the country.

The goal of S. 66 is to substantially deregulate the cable industry. We support this effort. We believe that the free marketplace is the best regulator of industry. But to achieve real regulation by marketplace forces requires vital alternative delivery systems which have sufficient capacity to serve the needs of a consumer market demanding multiple viewing options. I think Mr. Bortz and Mr. Jackson earlier substantiated this point.

Basically, added competition is needed and multichannel MDS, wireless cable if you will, has the best chance of success of all the new electronic media. We believe this is so because multiple channel MDS would utilize the airwaves, and not coaxial cable, and use relatively inexpensive transmission and reception equipment, thereby enabling operators to substantially reduce the cost of acquiring subscribers and to lower prices to the public.

While wireless cable will not eliminate coaxial cable, for MDS will always have fewer channels, it can serve those areas which are not economically feasible to wire, and will provide added programing diversity.

The advantage of our concept is that it can be implemented almost instantly. By utilizing existing technology, the Nation's top 50 markets can be fully wired within 2 years of authorization at a capital cost of not more than $35 million as compared with over $15 billion for cable and many more years.

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[16] Dizard, "Direct Broadcast Satellites (DBS); The U.S. Position," in 2 "Cable/Broadband Communication Book" 73 (Hollowell ed. 1981).

Our proposal calls for the reallocation of channels presently reserved for the ITFS, or instructional television fixed service. Some 20 years ago, the FCC set aside 4,200 channels for the use of educational institutions in the top 150 markets. It is sad to report that only 11 percent of this channel capacity is currently being used. Less than 200 licensees are presently operating in only 29 States and the District of Columbia. Most markets have more than 20 unused channels available.

The airwaves are a national resource, and such flagrant nonuse of a national resource is as wrong as abusing or squandering one. Certainly such nonuse is wasteful when there are others who could put this resource to use for the public good.

For various economic and financial reasons, ITFS has been hard pressed to develop as rapidly as MDS. With a mere 11 percent of its capacity used in the top 150 markets, still less in smaller markets. ITFS has never realized the potential envisioned by the FCC when it created ITFS.

This is not to say that individual ITFS systems are not doing very valuable work, or that we oppose its objectives. ITFS performs a valuable public service, and we have not asked that any existing ITFS use be eliminated or curtailed. Because so much ITFS spectrum presently lies fallow, there is room for both of us.

We believe that ITFS stands to gain a great deal from the expansion of MDS. ITFS programers could for the first time gain access to the homes, something they have never been able to achieve on their own because of the inherent economics associated with ITFS and the wherewithal of its licensees. The piggybacking of ITFS channels on multichannel MDS systems would cost ITFS operators nothing. The small cost involved would be picked up entirely by the MDS carriers, who would be happy to do so because they know there is a market for educational programs. Thus ITFS stands to gain audiences it never otherwise could reach without losing anything it presently has, and the public would gain a viable alternative and competitive delivery system.

In the long run, this would only serve to help this great country of ours become a wired nation and thus assure a leadership position for the United States in global telecommunications.

I thank you for the privilege of appearing before you today, and I would be happy to answer any questions you may have.

[The statement follows:]

Statement of Don Franco, President, Microband Corp. of America

Mr. Chairman, members of the Committee, my name is Don Franco, and I am President of Microband Corporation of America—the nation's largest Multipoint Distribution Service carrier. I thank you for providing me with this opportunity to discuss the competitive impact which the MDS industry presently has and can have in the future upon cable television.

MDS is a low power, omnidirectional common carrier transmission medium which has been operational since 1973. MDS is today primarily utilized to deliver premium video programming to apartments, hotels and individual residences via microwave. The signal is received by low cost antennas mounted on the rooftop and downconverted to an unused VHF television channel for viewing on the subscriber's conventional television set. (See Attachment 1.) While there are at present almost one million subscribers to MDS delivered services nationwide, the industry has had relatively little impact upon the cable television industry. This is true because the majority of MDS subscribers reside in areas which have not been fully cabled,[1] and because the Federal Communications Commission has restricted each MDS carrier to a single channel in each market. It should come as no surprise that every study of this issue has concluded that people prefer having more channels, and thus more program options, over having but a single channel.[2] A recent study commissioned by the National Cable Television Association, for example, found that more than 60 percent of the single channel subscription television subscribers surveyed would favor three channel STV even at a price double the present level.[3]

One year ago last week, Microband filed with the Commission an exciting proposal for the reallocation of spectrum to enable three MDS carriers in each market to operate four or five channel MDS systems.

There can be little doubt that a strong demand exists for pay television programming today. As of June 30, 1982, there were approximately twenty million households subscribing to pay television across the country,[4] and this number is expected to increase by as much as fifty percent in the coming year. While it is too early to determine the exact percentage of households which will ultimately subscribe to pay television, a recent Gallup Organization poll indicates that fully 73 percent of those living in areas where pay television is available are interested in subscribing.[5] This figure is confirmed by the fact that 72 percent of those who subscribe to a basic cable service also subscribe to a premium service, where available.[6] Projecting a 73 percent demand across the nation as a whole, there are approximately 60,000,000 potential subscribers to premium video services, of whom 40,000,000, or fully two-thirds, are unserved today.

A growing body of empirical and theoretical evidence indicates that those who are unserved are not only willing to purchase premium programming, but that they will desire multiple services where available. This evidence, which is reviewed in detail by a Microband-commissioned study conducted by Browne, Bortz & Coddington—a leading communications consulting firm—underscored Microband's proposal.[7] Perhaps the most significant study of the demand for multiple channel video distribution services is the one recently conducted by the Gallup Organization. For the United States as a whole, the study estimates that 52 percent of all households want at least one premium service, and that 27 percent want two or more. In those areas which are already cabled (and the residents presumably more familiar with premium services), the study found 87 percent desiring at least one pay service, and 54 percent wanting two or more.[8]

The Gallup findings have been confirmed by other studies. A recent consumer survey by Business Communications Inc. of 8,200 persons without access to cable found that more than two-thirds were interested in subscribing to one premium channel, almost 60 percent to two or more premium channels.[9] Studies performed by cable franchise applicants in Denver, Colorado and Scottsdale, Arizona predicted that 47 percent and 75 percent, respectively, of basic subscribers will also subscribe to two or more premium video services.[10] An econometric analysis of consumer demand for additional pay television channels conducted by Arthur D. Little, Inc. for Satellite Television Corporation also supports the existence of a demand for multiple channels of premium video services.[11]

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[1] The effects of the introduction of cable in an area served by MDS are detailed in a study prepared by Browne, Bortz & Coddington, "Report On Multichannel MDS for The Ad Hoc Committee on Wireless Cable." (July 1982)

[2] A nationwide poll taken by the Gallup Organization in 1981 found that over 50 percent of all households in the United States desire more than one channel of pay television in addition to basic service. "Gallup Study Shows Strong Interest in Pay TV," Pay TV Newsletter, at 3 (Oct. 19, 1981). Actual experience confirms these research findings. In "new-build" cable systems which offer multiple pay channels as part of their initial offerings, the average subscriber purchases 1.5 to 2 pay channels in addition to basic service. Looking into the future, this ratio is likely to increase as new services begin to be offered. Actual demand for these new services is less easy to determine because empirical data is limited at this time due to the newness of the technology. However, we anticipate market demand for interactive data services both home and business to be substantial. The Yankee Group has forecast a $10 billion market by 1990 for interactive videotext services controlled by telephone keypads or activated by voice. See Communications News, at 92 (Sept. 1981).

[3] Browne, Bortz & Coddington, "The Impact of Competitive Distribution Technologies on Cable Television," at 20 (March 1982) [hereinafter cited as "NCTA Study:]".

[4] Paul Kagan Associates, Inc. "The Cable TV Financial Databook," at 48 (Dec. 1982) [hereinafter cited as "Cable Databook"].

[5] See "Gallup Study Shows Strong Interest in Pay TV," Pay TV Newsletter, at 3 (Oct. 19, 1981) [hereinafter cited as "Gallup Study"].

[6] See "Cable Databook," at 48.

[7] See Browne, Bortz & Coddington, "Demand for Multiple Premium Television Channels" (Dec. 1981) [hereinafter cited as "BBC Study"]

[8] See Gallup Study, supra.

[9] See "Numbers Mill," "CableVision" (Oct. 12, 1981).

[10] See BBC Study, at 7.

Operational experience in the pay television marketplace also confirms a demand for multiple channels of pay television. A 1980 study of 447 newer cable systems reveals, for example, that basic subscribers purchased, on average, one and a half premium channels. With the recent proliferation of premium channels, it can be safely assumed that this figure is substantially higher today. Indeed, more recent data from Cablevision of Chicago reveals that an overwhelming eighty-two percent of its subscribers purchased all three of the premium tiers available.[12] In addition, subscription television operators have succeeded in selling a second tier of programming to nearly two-thirds of the STV subscribers nationwide with access to a second tier.

Indeed, the commission itself has recently recognized the strong consumer demand for additional video programming. In authorizing the Direct Broadcast Satellite service, the Commission specifically found that: "viewers continue to place considerable value on additional television signals even when many signals are already available, and that the public will benefit from the availability of additional channels."[13]

Perhaps most importantly, the marketplace has evidenced its confidence in consumer demand for additional video services. In the first six months of 1982 alone, ninety five new cable television franchises were awarded.[14] United Satellite Television Corporation has raised between $50 million and $100 million in capital for its direct-to-home satellite broadcasting service,[15] while CBS, Inc. has indicated that its Direct Broadcast Satellite System (one of eight authorized) alone would cost about $180 million.[16] Cost estimates for seven of the eight authorized DBS providers indicate that almost $3.5 billion has been committed to providing additional video programming view DBS. As evidenced by the numerous comments filed in General Docket No. 80-112 and 80-113, the MDS industry, too, firmly believes that there is a strong consumer demand for multiple channel MDS. The men and women who make up this industry are willing to commit significant financial sums in reliance upon this belief.

In sum, the consuming public, and those in the industry, have indicated that a strong demand exists for additional avenues by which video services can be delivered. Multiple channel MDS will provide a rapid, cost-effective mechanism for effecting such delivery.

In additional Microband envisions that two-way asymmetrical services (similar to those proposed by many cable operators) will be offered by incorporating existing intelligent packet network facilities, such as those provided by Microband's sister company, Tymnet, Inc., into the MDS system. (See Attachment 2 and Attachment 3) Local nodes, equipped with information storage modules, voice response units and other "intelligent" software and hardware, will enable customers to offer many innovative services such as (1) pay per view entertainment services (movie, sports, etc.), (2) information services (videotext, electronic mail, etc.) (3) transactional services (electronic funds transfer, electronic games, shop at home, etc.) and (4) general enhanced services (security, energy management, teleconferencing, etc.)[17]

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[11] See Arthur D. Little, Inc., "Pay Television Services Via Direct Broadcast Satellite: Demand and Impact in the 1980's" (May 1980).

[12] Paul Kagan Associates, Pay TV Newsletter (April 2, 1981)

[13] Inquiry into the development of regulatory policy in regard to Direct Broadcast satellites for the period following the 1983 Regional Administrative Radio Conference, 90 D.C.C.2d 676, 681 (1982).

[14] See Cable Databook, at 37.

[15] See "Prudential places a bet on DBS," Broadcasting, at 9 (Feb. 7, 1983).

[16] See "CBS puts DBS costs at over $180 million," Broadcasting, at 69 (Feb. 7, 1982).

[17] A general review of comments of cable executives reveals a strong interest in interactive services. See, "Wire—A Cable Fable", Cablevision, (Dec. 15, 1980). However, the major expense required to implement two-way interactive services on existing and planned cable systems may not be competitive with alternate methods of interaction, or justified by consumer interest. See, "Don't Oversell, Cable Industry is Cautioned," Broadcasting, at 29 (Aug. 31, 1981); Silverstein, "The Revenue Potential of Interactive Data," i.f. Magazine, at 18 (Autumn 1981); Metz, "Storer's Plans Questioned", New York Times, at D-6 (Oct. 26, 1981). The expense of converting the vast majority of the cable systems—the traditional 12 channel systems—to two-way interactive service is very high. Furthermore, the benefits from building two-way capability into new systems, when an alternative return path, the telephone, is already present in virtually every cable home, is open to question. See, "Phone-Cable Hybrids Seen." New York Times, at D-2 (Nov. 5, 1981); "Broadcast Phone 'Hybrid' Seen as Two-Way Cable Challenger," Communications News,

Continued

The MDS industry has wholeheartedly supported the concept of multiple channel service, and has demonstrated numerous public interest benefits inherent in Microband's proposal. Multiple channel MDS will provide a rapid means of meeting the unmet demand for multiple channels of premium video programming in areas not served by cable. Despite the talk about the proliferation of cable, over three-quarters of the households in the top fifty markets are not served by cable.[18] Current projections indicate that even by 1990, 30 percent of the nation's households will not be passed by cable.[19] Studies indicate that approximately 75 percent of those not passed by cable are, however, interested in receiving a premium video service—a demand which multiple channel MDS can begin to meet. In the words of the Majority Staff of the House Subcommittee on Telecommunications, "The clear conclusion to be drawn . . . is that the proliferation of information and entertainment alternatives has yet to arrive for most Americans." [20] The cable industry must be held responsible for the large numbers of Americans who desire access to multiple channels of video programming, but are, and will continue to be, unserved. Other available services, including MDS, subscription television and low power television, lack the multiple channel capacity demanded by the public. Since there are no alternative distribution systems authorized to provide multiple channel video services,[21] cable has been able to construct new facilities on a schedule to suit its own pace, and has little incentive to upgrade antiquated systems.[22] This type of activity, however, can be impacted by the introduction of a multiple channel MDS capable of competing with cable.

In our view, achieving an effective counter-balance to cable's monopoly status through marketplace factors may well eliminate the necessity for increased regulation of the cable industry. To achieve regulation by marketplace forces, however, requires viable, alternative delivery systems. Microband believes that multiple chan-

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at 92 (Sept. 1981). Indeed, AT&T and CBS, among others who are experimenting with interactive videotext systems, have focused on the existing telephone system as the most cost-effective return path. See, AT&T Sharpens Focus of U.S. Videotex Plans", Computerword, at 9 (Oct. 12, 1981); "Report Says AT&T May Be Best Medium for Electronic Publishing," Multichannel News, at 24 (Oct. 12, 1981).

For some time now, the cable industry has exploited the promise of interactive services in their franchise applications. The Qube technology, developed at great cost by Warner-Amex Communications, has achieved a great deal of publicity in recent years, as have other proposals by other cable interests. The promises, however, have not been realized. As the Wall Street Journal stated recently in a feature article on Qube, "Born nearly 4 years ago with lots of hoopla, Qube and its 'interactive' capability were supposed to transform [the] lifestyle in Columbus [Ohio]. 'The age of passive viewing is over' Qube declared in its promotional literature '. . . because the miracle of Qube is here.' The main miracle of Qube, however, has been its role in helping Warner-Amex win a major share of cable franchises." See "Two-Way Cable TV Disappoints Viewers in Columbia, Ohio as Programming Lags," The Wall Street Journal, at 31 (Sept. 30, 1981).

[18] "Home Video Report," at 3 (Sept. 21, 1981).

[19] Communications News, at 92 (Sept. 1981).

[20] "Telecomunications in Transition: The Status of Competition in the Telecommunications Industry," A Report by the Majority Staff of the Subcommittee on Telecommunications, Consumer Protection and Finance of the Committee of Energy and Commerce, House of Representatives, 97th Cong., 1st Sess., at 357 (Nov. 3, 1981) [hereinafter cited as "House Report"].

[21] Competition among cable systems is virtually non-existent today as it has been since the inception of the cable industry. The F.C.C.'s Network Inquiry Special Staff's First Report on Prospects for Additional Networks (Jan. 1980) states: "The economics of cable television usually prohibits overwiring, and virtually all cable television usually prohibits overwiring, and virtually all cable franchises accordingly are either de facto or de jure exclusive." Two books were referenced by the Staff in making this statement: "Cable Television and the Problem of Local Monopoly," by R. Posner, and "Cable Television: The Process of Franchising," by L. Johnson and M. Boltein. By "the economics of cable" the Staff means the high up front construction costs and the substantial penetration percentages (the industry average is around 50 percent) of homes passed required to recoup this investment. In theory, this makes it unlikely that many traditional cable companies will ever compete with one another for the same subscriber, even though most franchises are "non-exclusive". This is so because two systems each with 25 percent penetration would not be economically viable. The facts support this. The July 1980 issue of Paul Kagan's Cable Television Regulation newsletter stated: "Out of the 10,000 municipalities served by cable, only five are significantly or completely overbuilt. Two additional markets are under construction and half dozen are in various stages of being granted. Historically, there have been approximately two dozen cases of overlapping franchise. In most cases one of the companies has merged with the other or sold out." (Emphasis supplied.)

[22] Notwithstanding all of the publicity surrounding 100 channel cable systems, fully three-fourths of all cable systems today have 12 channels or less. The average system provides only 10 operating channels. Faced with little or no competitive incentive, most of these systems are not being upgraded. House Report, at 269.

nel MDS can be just such a system, providing—for the first time—a true competition to the cable television industry.

According to a Microband-commissioned study by Browne, Bortz and Coddington, four or five channels are sufficient to essentially satisfy the present level of demand for multiple tiers of premium television programming. Our research shows that consumer demand for pay television channels declines rapidly and that the value of more than four or five channesl to the consumer is marginal. Thus, while a five channel MDS-delivered program package is not substitutable for a fifty channel cable package at the same price, substitution will occur when the price of the five channel package is discounted.[23] Because of cost advantages inherent to microwave transmission as compared with cable, multiple channel MDS systems will be able to offer service at lower rates. Therefore, it is likely that the marketplace will view MDS at a competitive alternative to cable, and that the advantages of a competitive marketplace will accrue to the public.

To implement Microband's proposal, it will be necessary for the Commission to reallocate a limited number of frequencies now allocated to the Instructional Television Fixed Service ("ITFS") which are presently underused. After twenty years of existence, ITFS licenses have been issued for only approximately 198 of the 4,200 channels in the top 150 markets. By contrast, MDS carriers have applied for virtually every available video channel in these markets.[24] Moreover, many of the ITFS channels are inefficiently utilized today, and can be reengineered, at the expense of the MDS industry, to free up additional channels in those congested cities without any reduction in service.

However, unless MDS systems are permitted to expend their channel capacities, and to do so rapidly, the MDS industry will be unable to provide competition to cable. The cable industry is continuing to install new cable at a rate which, we believe, eliminates ten to fifteen percent of the primary market for multiple channel MDS each year. Unless multiple channel MDS is permitted to enter the marketplace soon, it will be doomed before it begins.[25]

Unfortunately, two obstacles stand in the way of early implementation of multiple channel MDS. First, the Federal Communications Commission must reallocate the necessary spectrum to enable multiple channel MDS to become a reality. A Notice of Proposed Rulemaking suggesting such a reallocation was released almost three years ago, and Microband's proposal has been on the table for over a year. (See Attachment 4) However, no decision by the Commission is expected until spring, at the earliest.

A second, and perhaps more serious, obstacle will be the regulatory delay attendant to licensing multiple channel carriers. With history as its guide, the MDS industry estimates that comparative hearings on the hundreds, if not thousands, of multiple channel MDS applications which are anticipated will take three to four years, at minimum. In the meantime, cable will be able to further entrench itself in the marketplace, lessening the prospects that multiple channel MDS will even gain a foothold in the marketplace.[26]

To avoid this result, Microband has proposed that the Commission permit only the existing MDS carriers in a given community to apply for one of three groups of channels. The vast majority of the MDS industry—carriers and customers alike—have applauded this proposal. If Microband's proposal is adopted, we can expect multiple channel MDS to begin operations within six months, as mutually exclusive applicants rapidly settle their differences in order to enter the marketplace.

In conclusion, I must re-emphasize that the MDS industry wants to be, and can be, an effective competitor to the cable industry. The marketplace forces which will result from such competition will provide the most effective check upon potential abuses by the cable industry, thus minimizing the need for increased regulation of cable.

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[23] The NCTA Study reveals, for example, that only slightly more than half of the existing cable subscribers surveyed would not consider switching to a lower priced multiple channel over-the-air delivery system. See NCTA Study, at 21.

[24] In the top 50 markets, two video MDS channels are available, while only a single MDS channel suitable for video transmissions is available in the smaller markets.

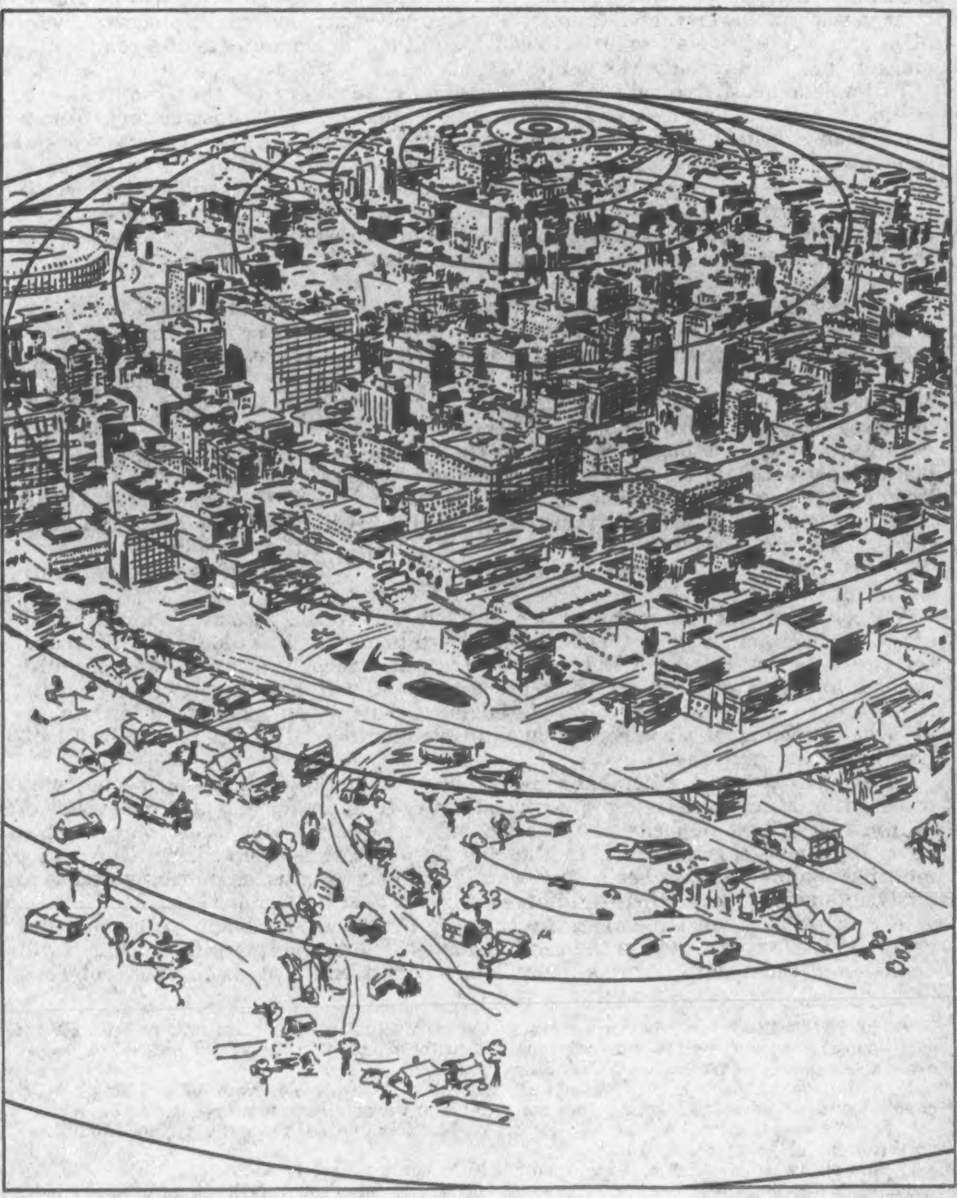
[25] See Browne, Bortz & Coodington, "Report on Multichannel MDS for the Ad Hoc Committee on Wireless Cable," at 7 (July 1982).

[26] This is not to say that multiple channel MDS cannot directly compete against cable. Because MDS operators will be able to pass cost-efficiencies inherent in MDS along to subscribers, multiple channel MDS will be subscribed to by many living in areas served by others. However, the BBC Study shows, in essence, that once a subscriber chooses a service (and usually pays an installation fee), he is likely to continue it. Thus, the overall viability of multiple channel MDS is weakened as competing industries increase penetration and, in effect, eliminated potential subscribers.

Thank you for allowing me to present these views.

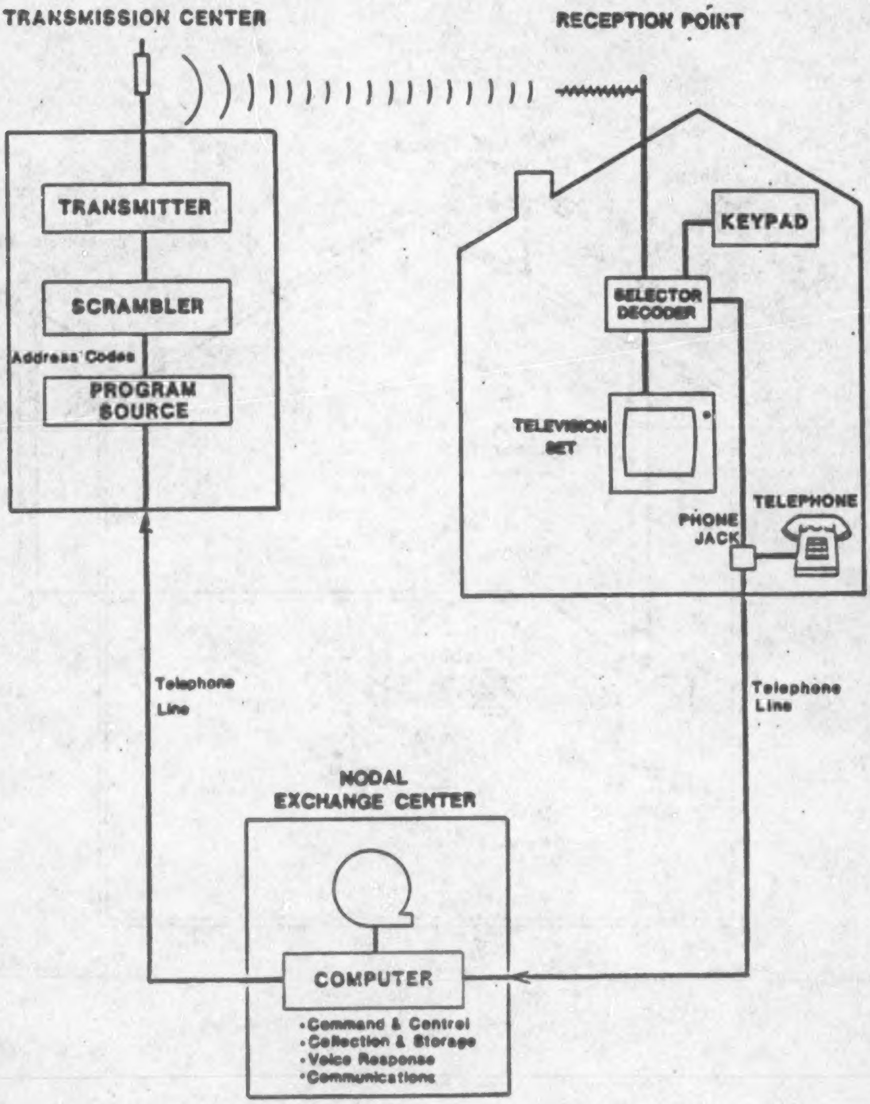
Attachment 1

An Over-the-Air "Wireless Cable" System



Attachment 2

TWO-WAY ADDRESSABILITY



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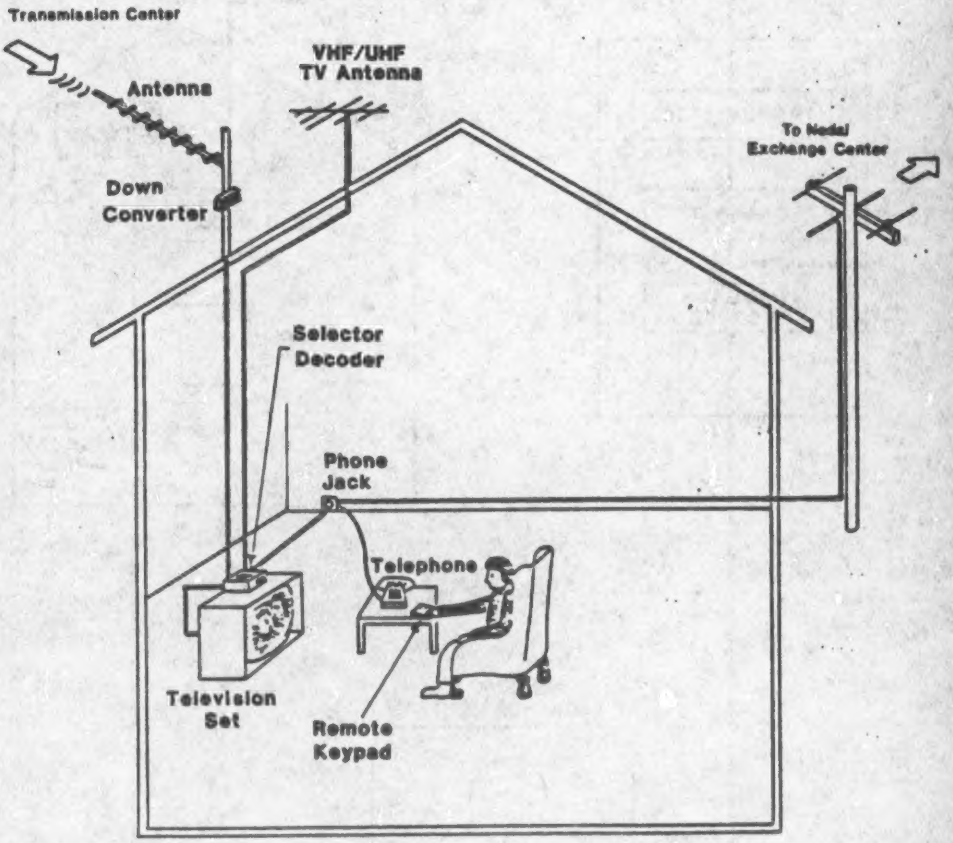
Attachment 3

MDS HYBRID 2-WAY SYSTEM



Attachment 4

End Bureaucratic Delays

Varian expansion petition—7 years old.
Docket 80-112—3 years old.
Microband proposal—now 1 year old.
DBS (Comsat) proposed—December 1980.
DBS authorized by the FCC—September 1982 (21 months later).
DBS projected operations—1986-87.
Expanded MDS projected operations—6 months after FCC approval.

[The following information was subsequently received for the record:]

Microband Corporation of America,
New York, N.Y., March 16, 1983.

Senator Slade Gorton,
Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

Dear Sir: This is in response to the questions forwarded for the hearing record on S. 66 the Cable Telecommunications Act of 1983.

Question 1. Are multi-point distribution services in actual operation at this time or are they still in the developmental stage?

Answer. MDS has been in operation since the Fall of 1973, albeit in single channel mode. At the present time there are approximately 220 stations licensed around the country. For the most part, these stations distribute pay TV programs to single family homes. Substantial numbers of additional subscribers reside in multiple dwelling units. Service is also provided to hotels and motels. No new technology is required in order to expand MDS to multiple channels. What developments will occur will be areas of reducing cost. A recent test in Salt Lake City demonstrated the technical feasibility of an 8 channel service. Several manufacturers have commenced work on the required equipment.

Question 2. In which communities is this technology available or expected to be available?

Answer. MDS is authorized to operate throughout the United States. At the present time the smallest market in which an MDS station is licensed is Charlottesville, VA, the 198th ADI, and the largest is New York. A recent list of markets in which MDS is licensed is attached as Exhibit A. While, like most businesses, MDS is most profitable in the larger markets, history tells us that it will be utilized extensively throughout the United States wherever there is a demand for program diversity.

Question 3. How many people receive MDS or are expected to receive it by 1990?

Answer. At the present time less than one million families receive pay TV programming via MDS. By 1990, with multiple channel capacity, it is expected that this number will grow to not more than 6 million (approximately 10 percent of the pay TV universe). This number was determined in an independent analysis performed for Microband by Browne, Bortz and Coddington and submitted to the FCC in February of 1982. A copy of this study is attached hereto as Exhibit B.

Question 4. How many channels does MDS offer its subscribers?

Answer. Under existing FCC rules, two MDS video channels have been allocated in each of the top 50 markets. Nonetheless, because construction permits have not been awarded with respect to all of these channels, in most cases only one MDS channel is operating in any market. While there are a few markets wherein two channels exist, this is the exception rather than the rule.

Question 5. Is MDS capable of offering two-way services?

Answer. MDS is capable of providing two-way services. As Microband envisions it, however, the two-way services will be provided using telephone lines for the return path rather than a microwave signal. Two-way microwave technology is extremely expensive, prohibitively so in conjunction with communications into the home. As such, we do not expect that two-way microwave communications will become commercially feasible. Two-way microwave is suitable for high speed computer-to-computer data communications by large industrial users (as evisioned in the DTS/DEMS service). On the other hand, by utilizing existing value-added data networks, such as Tymnet's, in conjunction with multi-channel MDS, very efficient two-way communications become possible. By means of touch-tone telephone and/or a separate modem device connected to the telephone lines, individual subscribers will be able to interact with a local number (in this case a Tymnet node) and input digital instructions to a computer. This will enable the subscriber to order a pay-per-view movie or purchase a product or service, for example. In the first case, the Tymnet controller would send a message to a computer at the MDS station instructing it to address the subscriber's home with the desired movie and to send him a bill. If the subscriber had, instead, ordered a product or service, the node would have directed that transaction to another computer for fulfillment and billing. Again, no new technology is involved. Because of our "hybrid" approach, electronic transaction capability will be brought into the American home quickly and inexpensively. Attached as Exhibit C is a more complete description of our proposed system.

Question 6. How does the transmission capacity of MDS (i.e. the amount and type of communications services offered simultaneously over MDS) compare to that of cable services?

Answer. In its expanded mode, the MDS industry would, if the FCC adopts Microband's proposal, be capable of providing a maximum of 14 channels into the home. (In addition to these 14 channels, it is possible that several ITFS educational channels could be piggy-backed along with the MDS channels). This capacity would compete quite favorably with the small 12 channel systems which presently comprise the majority of all cable systems. However, it would be only a fraction of the channels available on the newer, 100 plus channel systems which some cable operators are building and others are proposing. Nonetheless, our research has confirmed that most subscribers do not require the vast number of channels available to them on cable. Recent studies have indicated that a four or five channel service could accommodate most of their requirements.

Question 7. How does the cost of receiving MDS services compare to that of cable?

Answer. Multi-channel MDS will provide the lowest cost method of delivering multiple channels of pay TV programming into the home. We estimate that the capital cost per subscriber will be approximately $200-$250 installed. This compares with as much as $1,000 per subscriber with respect to some urban cable systems. Because the cost of acquiring a subscriber is so low, MDS' monthly subscriber fees will be much lower than is the case with other services. This does not mean, however, that MDS will displace cable. Because of MDS' fewer channels, cable will remain the dominant pay TV medium well into the future. Multi-channel MDS will, however, serve to hold down the price of cable service to the public, as cable will no longer be a monopoly within its franchise area.

Question 8. Is MDS technologically available to everyone? That is, will everyone be able to get a clear signal?

Answer. MDS is a microwave service. As such, line of sight or near line of sight is required from the receiving antenna to the transmitting antenna in order for a clear signal to be obtained. Thus, there will always be some people who will not be able, for various reasons, to obtain a clear signal. The number which will fall into this category will vary from market to market depending upon terrain and other factors. However, our experience across the nation has been that, on average, at least 85 percent of all homes can receive a signal. In many markets, this number approaches 100 percent. I might add, however, that whereas MDS signals do not, for reasons of physics, always penetrate natural obstructions, it should not be assumed that other media, such as cable, reach 100 percent of their service areas either. Here in New York, for example, large areas of Manhattan (the poorest neighborhoods) have, for economic reasons, been denied cable service. Clearly, management decisions can be just as important as natural obstructions in the provision of service.

I trust that the foregoing satisfactorily answers your questions. If not, or if further information is required, please do not hesitate to contact us.

Sincerely,

DON FRANCO,
President.

Enclosures.[1]

Senator GOLDWATER. Thank you, Mr. Franco, very much. Now we will have Mr. John Raines.

STATEMENT OF JOHN RAINES, CHAIRMAN, NATIONAL SATELLITE CABLE ASSOCIATION

Mr. RAINES. Thank you, Mr. Chairman.

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[1] The attachments referred to are in the Committee files.

I am John Raines, chairman of the National Satellite Cable Association, and president of Communications and Cable, Inc., a company that specializes in the private cable industry.

We have provided a written statement which expands on my remarks.

Senator GOLDWATER. It will be included in the record.

Mr. RAINES. The NSCA welcomes this opportunity to appear before this subcommittee on a topic of great importance to the future of the cable telecommunications industry. We support the intent of S. 66 to encourage a competitive environment for the growth and development of the cable marketplace.

The National Satellite Cable Association is the trade association which represents the satellite master antenna TV and private cable industry. Our cable systems are located entirely on private property and do not use public streets. We estimate that over 15 million households could receive their television from private cable systems within the next 5 years.

The rapid growth of the private cable business has demonstrated that free competition and minimum regulation does indeed promote diverse and rapid development of the telecommunications network. The growth of private cable has been encouraged by a Federal legal and regulatory environment which recognizes that private cable provides a viable alternative to municipally franchised cable systems and private cable is not subject to State or municipal regulation unless and until public rights-of-way are used.

Just in the past year, hundreds of thousands of apartment units were wired to receive service by private cable companies. Most of these units previously had no prospect to receive cable television in the near future. Indeed, many large multiple-system operators, MSO's, are now entering the private cable and SMATV business.

The private cable entrepreneurs have successfully demonstrated that large, well-heeled MSO's and entertainment conglomerates do not necessarily have to control the telecommunications network. Small businessmen operating responsibly and with the protection of the law can identify and develop markets that MSO's ignore. The success of private cable and SMATV has encouraged more rapid development of direct broadcast satellite and multichannel MDS, and other alternative technologies.

Private cable does not use public rights-of-way and, therefore, is not subject to the franchising process or to State controls. However, several municipal and State governments have sought to impose restraints and burdens on the private cable operations with the implicit intent to drive them out of business.

Several States have statutes that require a multifamily property owner to grant access to his or her property to the municipally franchised cable company. The franchised cable company in these States have the right to that property. The development of alternative distribution systems, such as private cable and the others you have heard here, has been stunted in these States and the marketplace itself was denied the opportunity to choose which systems were best to serve its needs.

A recent petition to the FCC by a major MSO has sought to reserve the use of the CARS band exclusively to franchised cable companies. Obviously such exclusive use is not in keeping with the policy of open competition the Telecommunications Act of 1983 seeks to promote.

The private cable industry has been the target of a boycott by many of the major program suppliers. The private cable industry has fought this boycott both in the court and in the marketplace. However, this litigation is costly and time consuming, money and time an infant industry can ill afford to spend, but the suppliers continue their boycott. Further, the time and money spent on these cases directly reduces the potential resources of this young industry, a drain the industry and the cable market should not be forced to bear.

The NSCA respectfully requests that Congress undertake to address these anticompetitive activities by the program suppliers and MSO conglomerates.

The private cable industry is made up of small businessmen and entrepreneurs who believe that free enterprise and competition give the best possible service to the greatest number of people.

The NSCA seeks no special favors. We want recognition; of the right to exist and compete, the right to be free from unwarranted State and municipal regulation, the right to have the multifamily market makes its own decisions regarding cable service not as directed by a State, the right to equal access to the microwave spectrum, and the right to access to the diverse programing sources available.

We urge this subcommittee to be mindful of these concerns as it deliberates S. 66.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JOHN M. RAINES, CHAIRMAN, NATIONAL SATELLITE CABLE ASSOCIATION

Mr. Chairman: The NSCA welcomes this opportunity to appear before this Subcommittee on a topic of great importance to the future of telecommunications services in this country. We support the intent of S. 66 to encourage a competitive environment for the growth and development of the cable marketplace.

The National Satellite Cable Association is the trade association which represents the satellite master antenna TV (SMATV) and Private Cable industry. We have over 200 members, nationwide, made up of Private Cable system operators, owners of multi-housing developments, and private investors. These cable systems are located entirely on private property and do not use public streets or byways. Typically a private cable system need not obtain a municipal cable franchise since it does not use public rights of way. We estimate that over 15 million households could receive their television from Private Cable systems within the next five years.

NSCA believes that any legislation regarding the cable communications industry must have as its ultimate objective the presentation to the American public of the most diverse and greatest number of information sources possible. The NSCA further believes that this objective should and can be achieved by the continued adherence to the two principles which are the bedrock of the American communications system:

1. Reliance on the Free Enterprise System, wherever possible, and the benefits which accrue from open and free competition.

2. Non-involvement of Government in the communications field, as embodied in the First Amendment, except where necessary to promote the free and open exchange of information.

The rapid growth of the Private Cable business has demonstrated that free competition, and minimum regulation does indeed promote diverse and rapid development of the telecommunications network. The growth of Private Cable has been encouraged by a Federal legal and regulatory environment which recognizes that: (1) Private Cable provides a viable alternative to municipally franchised cable systems;

and (2) Private Cable is not subject to state and municipal regulation unless and until public rights of way are used.

S. 66 as introduced by Sen. Goldwater reiterates these principles. The NSCA supports these fundamental principles in S. 66 and will assist its passage as it proceeds through the legislative process. S. 66 will only promote the benefits that have accrued from the competitive services offered by Private Cable.

Just in the past year, hundreds of thousands of apartment units were wired to receive service by Private cable companies. Most of these units previously had no prospect of receiving cable television service in the near future.

Many municipally franchised cable companies are now pushed by competitive pressures to bring their service to the multi-family market as quickly as possible. Indeed, many large Muitiple System Operators are now entering the Private Cable and DMATV business in their own right.

New programming services are being launched which will serve the private Cable/SMATV market. As discussed later, some major premium programmers continue to boycott the Private Cable industry with the stated purpose of running the Private Cable operators out of business. The Private Cable industry, in response, has organized through the NSCA and successfully developed alternative programming services.

The Private Cable/SMATV entrepreneurs have successfully demonstrated that large, well-heeled MSO's and entertainment conglomerates do not necessarily have to control the telecommunications network. Small businessmen, operating responsibly and with the protection of the law can identify and develop markets that the MSO's ignore. And, the success of Private Cable and SMATV has encouraged the more rapid development of Direct Broadcast Service ("DBS"), multi-channel MDS and other alternative technologies. The NSCA has set technical and ethical standards for its members which will help ensure that the Private Cable industry will compete openly and fairly with franchised systems.

Private Cable does not use public rights of way and therefore is not subject to the franchising process or to state controls. However, several municipal and state governments have sought to impose restraints and burdens on Private Cable operations with the implicit intent of driving them out of business. For example, the City of Chicago has enacted a zoning ordinance which makes the erection of a satellite receiving dish by a Private Cable operator virtually impossible. A town in Michigan has sought to classify a Private Cable system as a "public utility" even though municipally franchised cable systems are clearly not public utilities in Michigan.

Several states have enacted laws which purport to make payments to a property owner by a Private Cable operator from the use of the property illegal. Such payments are constitutionally required of a municipally franchised cable company under the 1982 Supreme Court decision in Loretto vs. Teleprompter.

The NSCA does not object to reasonable state regulation designed to promote legitimate state interests, e.g., compliance requirements for electrical wiring. However, some states and municipalities have sought to use their police powers to promote and favor municipally franchised cable systems in which the state and local governments have a clear economic interest. This favoritism is often directly at the expense of Private Cable and other competing technologies.

Several states have statutes that require a multi-family property owner to grant access to his/her premises a municipally franchised cable company. The multi-family market is, in effect, compelled to do business with the municipally franchised cable company in these few states (five in all). The development of alternative distribution systems, such as Private Cable, has been stunted in these states and the marketplace itself denied the opportunity to choose which system will best serve its needs. In keeping with the principles of free competition and minimal government interference, the NSCA urges the Committee to address in its report the rights of competing cable technologies to access to private property unhindered by state and local regulation.

This language will make clear that the cable telecommunications industry is first and foremost a national concern. Any regulation of competing technologies which has as its effect or purpose the favoring of one distribution method at the expense of another goes against the very intent of this bill.

There are, of course, a different set of concerns that apply if and when a Private Cable company puts its cable in or on a public right of way. A recent trend in the Private Cable industry is to link several adjoining multi-family properties together by means of cable. Some communities, such as Tempe, Arizona and Austin, Texas have encouraged this development by granting so-called "designated franchises" which permit a Private Cable operatior to use public rights of interconnect several multi-family properties.

However, other communities, such as Nashville, Tennessee have denied Private Cable operators this opportunity to increase the scope and efficiency of their business. The case in Nashville is particularly noteworthy since the franchised cable company in the community is itself also engaged in the Private Cable/SMATV business in Nashville. The denial of a designated franchise in Nashville is clearly an anti-competitive policy.

The NSCA urges the Committee to address the issue of exclusive municipal franchises and to make it clear that local governments are expected to entertain and grant franchise applications that are truly competitive and promote alternative cable technologies.

Another area where entrenched franchised cable interests have sought to stifle Private Cable competition is the allocation of the microwave spectrum by the FCC. In the past year, Private Cable operators have applied for and received CARS band licenses. These licenses allow the Private Cable operator to interconnect several properties in a community by means of multi-channel microwave transmissions. A recent petition to the FCC by a major MSO has sought to reserve the use of CARS exclusively to franchised cable companies. Obviously, such exclusive use is antithetical to the competition the Telecommunications Act of 1983 seeks to promote.

The NSCA believes the time has come for the Federal Communications Commission to reexamine its allocation of the microwave spectrum to video technologies. The FCC has already done this in part by experimenting with multi-channel MBS. However, a comprehensive review is in order.

Ever since formation of NSCA, the Private Cable industry has been the target of a boycott by virtually all of the major program suppliers. The Private Cable industry has fought this boycott both in the courts and the marketplace. Anti-trust lawsuits have been brought throughout the country by Private Cable operators and the Arizona Attorney General has brought an action. Some limited success has been achieved. ESPN, a major sports programmer, entered into a consent decree in the Arizona Attorney General's case and now serves Private Cable/SMATV throughout the country. However, this litigation is costly and time-consuming—money and time an infant industry can ill afford to spend. And the program suppliers continue their boycott. Further, the time and money spent on these cases directly reduces the financial resources of this young industry—a drain the industry and the cable market should not be forced to bear.

The Private Cable industry has responded by joining together through the NSCA and developing new program sources. We are pleased to report that two new premium programming services, ON-TV and SelecTV have agreed to serve the Private Cable industry.

These sources enhance the survivability of the Private Cable industry. But true diversity of programming continues to be denied to Private Cable. The owners of these boycotting services, for example, HBO is owned by Time, Inc., which also owns the largest cable MSO in the country, American Television Communications. Clearly the program boycott has as its intent and purpose driving Private Cable competition out of business.

The NSCA respectfully requests that Congress undertake to address these anti-competitive activities by the program supplier-MSO conglomerates.

The Private Cable/SMATV industry is made up of small businessmen and entrepreneurs who believe that free enterprise and competition give the best possible service to the greatest number of people for the lowest possible price. The Private Cable industry stands ready, willing and able to compete with the media conglomerates in the marketplace.

The NSCA seeks no special favors. We simply want recognition of: 1. The right to exist and compete; 2. The right to be free from unwarranted state and municipal regulation; 3. The right to have the multi-family market make its own decisions regarding cable service—not as dictated by the state; 4. The right to equal access to the microwave spectrum; and 5. The right of access to diverse programming sources.

We urge this Subcommittee to be mindful of these concerns as it deliberates on S. 66.

[The following information was subsequently received for the record:]

NATIONAL SATELLITE CABLE ASSOCIATION,
Washington, D.C., March 8, 1983.

Senator SLADE GORDON,
Senate Commerce Committee, Subcommittee on Communications,
Washington, D.C.

DEAR SENATOR: The reponse to the first question related to the communities in which private cable operates is only a short list of the major markets. Actually, our contacts with private cable operators indicate that private cable is available in almost every metropolitan area.

Since this is a new industry, our numbers may not be totally factual. The response related to how many people receive private cable service is our best available answer. In addition, to the 15 million owners referred to here, we believe that another 10 million residents of multi-housing units 1) do not have any MATV, SMATV or else 2) they receive their television from a traditional cable company.

It was certainly a pleasure to appear before the committee again and we were glad to have the opportunity to spend some time with you following the hearing.

Sincerely,

JOHN M. RAINES,
Chairman.

Attachment.

Question 1. In which communities is private cable available?

Answer. In practically all cities and suburban ares where large numbers of multi-housing communities are located: Miami, West Palm Beach, Florida; Atlanta, Georgia; Jacksonville, Florida; Charlotte, North Carolina; Montgomery County, Maryland; Fairfax County, Virginia; Nashville, Tennessee; Cleveland, Ohio; Detroit, Michigan; Indianapolis, Indiana; New Orleans, Louisiana; Houston, Dallas and Austin, Texas; Phoenix and Tucson, Arizona; Denver, Colorado; Minneapolis and St. Paul, Minnesota; Chicago, Illinois; New York, New York; Boston, Massachusetts; Los Angeles, California; Vancouver, Washington; Portland, Oregon; Grand Rapids, Michigan to name a few.

Question 2. How many people receive private cable services?

Answer. Private cable and MATV (without satellite connection) 12,000,000 estimate.

Private cable and SMATV (with satellite connection) 3,000,000 estimate.

Question 3. How many channels do private cable operators typically offer their subscribers?

Answer. Approximately one-half (50 percent) offer 12 channel, non-converter service.

Approximately one-fourth (25 percent) offer 13–21 channels.

Approximately one-fourth (25 percent) offer 22 or more channels.

Question 4. Is it true that private cable operators typically offer fewer channels of programming than regular cable systems because they face a higher per viewer cost of obtaining a wide range of programming?

Answer. Yes. The answer is somewhat more complicated than that, however. The private cable operator builds a very efficient system to keep the investment in line with what the customer wants and is willing to pay. The cost per viewer is also increased in some cases because some program suppliers charge the private cable operator more for the homes he reaches than the same supplier charges the franchised operator in the same town. Some Pay TV satellite delivered program services will not sell to private operators, thereby creating a monopoly so that the franchised operator may charge whatever he demands.

Senator GOLDWATER. Thank you very much, Mr. Raines.

Now Mr. Robert Fountain, you may proceed.

STATEMENT OF ROBERT FOUNTAIN, VICE PRESIDENT AND CHIEF OPERATING OFFICER, UNITED STATES SATELLITE BROADCASTING CO.

Mr. FOUNTAIN. Good morning, and thank you very much for the opportunity to appear before you.

My name is Robert Fountain. I am the executive vice president of USSB, which is a DBS applicant. I would like to say at the to , Mr. Chairman, that we share your enthusiasm for the prospects

DBS, and we would like to share with you this morning my prepared remarks, which I hope would be entered into the record.

Senator **Goldwater**. They will be.

Mr. **Fountain**. To expedite things, I would like to highlight what I think are some of the salient points of our plan and to share with you, if you will, a status report on what has occurred since we have received our permit to go into the DBS business on November 4, 1982.

USSB will be a DBS system that we think is quite unique because it will involve local television stations. We believe that DBS can do many things with all its technical breakthroughs, but we think that there is one area that it cannot reasonably be expected to perform and that is on the local level. Because USSB is the child, if you will, of Stanley Hubbard, who is a broadcaster, he has come up with the idea and conceived a plan that would further strengthen the local broadcast stations.

We plan to use USSB and all of its technology to deliver an advertiser supported system to every home in the United States. We will simultaneously make our program schedule available to a selected number of local television stations, much like, if you will, existing television networks. We believe our plan is different because we think it takes the best of both worlds. We will provide an opportunity for the local television station to become philosophically and financially involved with USSB.

We have an opportunity to program three channels, and as I said at the outset it will be primarily advertiser supported. However, we will investigate other opportunities as they come along with a very real thought in mind that we will pursue any and every opportunity that could involve a local television station, again financially, as a marketing partner in some of these new opportunities.

As far as the programing is concerned, we expect to compete vigorously in the marketplace for the best of television programing—entertainment, sports, news, and anything new that comes along. We expect that because of the extraordinary efficiency of delivering the DBS signal throughout the country that we will have an opportunity and, if you will, some responsibility to investigate new program forms, particularly the narrow interests of the specialized audience field. We have seen it function very successfully in the magazine industry and we believe there is absolutely no reason whatsoever why we cannot do the same thing on television.

Our economic structure will be quite different than that of the television networks, and we think we have an opportunity to pursue this.

As far as the status report is concerned, we have been quite busy since November 4. We have been involved in a number of conversations in the financial community and we are gratefully encouraged, and we would expect to be making an announcement there very shortly.

We have also been having conversations with virtually every satellite manufacturer in the country, and we also hope to be making a major announcement there within the next 60 days.

We have also found time to investigate opportunities and resources available to us both domestically and abroad in the programing field. We have talked to the major program suppliers in this country and outside of the country, and again we are greatly encouraged that USSB, with the appropriate financial resources which we have planned for, can and will compete for virtually every major event that appears on television or, if you will, on pay cable and the other technologies.

We have also received, I am pleased to report to you, extraordinary support, verbally at this point, from the major advertising agencies and some of the advertisers in the United States. We will be rated. We will have qualified audience research. We believe that there is indeed a place for another "network." We fully plan and are encouraged that we will be the first space network in this country.

We are at this point in time reconsidering the options that are available to us on channels 2 and 3. However, at this point we expect that that will be primarily directly to the home news and public affairs, and on that third channel would be, if you will, the narrow focused programing.

Thank you very much for the opportunity to chat with you this morning. I would be delighted to answer any questions.

[The statement follows:]

STATEMENT OF ROBERT F. FOUNTAIN, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, U.S. SATELLITE BROADCASTING CO.

Mr. Chairman and Members of the Committee: It is a privilege for me to speak to you today about United States Satellite Broadcasting Company and its plans for the development of a Direct Broadcast Satellite (DBS) system.

USSB was organized in 1981 by the principles of Hubbard Broadcasting, which has long been a pioneer in radio and television broadcasting. The new company was organized to enter the DBS business so that experienced broadcasters could participate in the new technology of Direct Broadcast Satellites and thus provide a valuable new television service to the public.

The Cable Telecommunications Bill does not directly regulate the DBS industry, but the intent of the bills is in accord with USSB's position that the cable television industry, as well as other television program delivery services, should have the ability to compete in the marketplace on a fair and equitable basis.

USSB is taking a three-tiered approach in providing the public the advertiser-supported programming of the DBS system:

(1) First and foremost, 3 channels of programming will be broadcast for direct-to-home reception by small, inexpensive earth stations.

(2) The programming on USSB's first channel will also be offered for rebroadcast to full service television stations who will become members in the USSB system.

(3) In areas where there are no local full-service television stations, the programming on channel one will be offered to low-power television stations.

Each member station will be authorized to rebroadcast the USSB programming within their Grade B area. Thus, the public in that area will have the choice of receiving the USSB programming directly from the satellite or via the transmission of the local member station. This will enable all people to receive USSB's free-advertiser supported programming from the outset.

USSB will make advertising spots available to member stations within the system's DBS programs. Other financial participation will also be available to member stations, and they will also be invited to become equity partners in USSB. Member stations in the top 50 markets will have uplink facilities to feed fast-breaking, live news and original programming to the system. With their broad experience in programming and operations, we feel that local broadcasting will make a great contribution to the success of USSB.

From the standpoint of news programming, the local stations will be a key component, and we intend to have them participate as news bureaus: Rather than sending a correspondent to St. Louis, for example, when a story breaks there, we would use the resources of the local member station whose reporters and staff could assess the impact of the news situation on their community better than an outside correspondent.

Since receiving the grant of its DBS application from the FCC last fall, along with seven other applicants, USSB has been active in the development of its proposed system. A series of meetings have been held with all of the domestic spacecraft manufacturers during which our plans were discussed in great detail. Within the next few months, we expect to enter into a contract for the construction of our system. We have also engaged in very productive discussions with a number of banks and investment houses with regard to financing the venture; we have met with the heads of major production studios about programming; and shortly, we will commence presentations to potential member stations. We are confident that our approach to DBS will help to both preserve and strengthen our nation's present broadcasting system, which is the most efficient and effective broadcasting system in the world, while at the same time contribute to the development of the direct broadcast satellite business.

In the evolving mass media marketplace, cable television has assumed a major role along side over-the-air broadcasting. More than 30 million households subscribe to cable television services. This is an important development because it demonstrates that the American people desire greater diversity and choice in the programming and information services available to them. As you already know, cable television technology is not actually a "new" technology. It has evolved over many years from a system delivering broadcast signals to communities that had either no television reception or very poor television reception to a system that provides our communities with many new channels of programming, both local and satellite-delivered signals.

The evolution of the communications satellite has significantly spurred the development of cable television in recent years, beginning in 1976 when the first satellite-delivered program service was made available to cable television systems. Since that time, nearly fifty new satellite programming services have been introduced to the market, including those that are pay services and those that are advertiser-supported, and nearly as many are now being planned.

Today, the further enhancement of satellite technology opens a new market for Direct Broadcast Satellite service. Together, the eight DBS applicants approved by the FCC will provide as many as 30 channels of entertainment, education, and information programming from high-powered satellites to inexpensive earth receive stations that are small enough to be placed on the rooftop of a home. In addition to providing an exciting and valuable new program service to the American public, the DBS industry will directly stimulate the creation of thousands of new jobs and the expansion of a number of high technology industries.

As we analyze the effect that DBS will have on the mass media marketplace, it is clear that its major impact will be to make satellite-delivered programming services more affordable for all who wish to receive them, including individual television households, local broadcasters, and cable television operators. This will be possible because the high powered signal delivered by DBS systems can be received by much smaller and much less expensive antenna systems than are needed to receive the signals from the communications satellites now in operation. Therefore, DBS will not only provide satellite television service directly to millions of Americans, including those who live in remote areas and who are without broadcast or cable television service; but it also will provide a new source of programming to broadcast stations and cable television systems alike.

In this increasingly complex and competitive marketplace it is important that the Government insure that each of the participants can compete on a fair and equal basis. Last December, Stanley Hubbard, President of USSB and Hubbard Broadcasting, testified before this Committee on this very question of fairness with respect to the Cable Copyright Bill, H.R. 5949, which was then under consideration. In his testimony, he described how the mandatory carriage provisions of that bill, which would have precluded the FCC from mandating carriage of free advertiser-supported DBS services by cable TV systems while at the same time primarily requiring the continued carriage of the signals of existing broadcasters, would stifle the development of the new DBS services. He also testified that the determination of which program services to be carried by cable television systems should be a function of the marketplace and not of the Government. However, if mandatory carriage of broadcast signals is dictated by the Government, then all broadcast services must be treated equally to be fair, and cable television systems should be required to carry one advertiser-supported channel of each DBS system.

In the DBS Industry, we face many exciting challenges and opportunities in the months ahead. This June, a conference among the countries of the Western Hemisphere will convene in Geneva at which time important decisions will be reached on the allocation of radio spectrum and satellite orbital locations for DBS services among the participating nations. The treaty will be submitted to the Senate for ratification. Some difficult negotiations are expected at this conference due to the conflicting needs and goals of the conferees.

An advisory committee which included representatives of USSB and other DBS applicants worked with the FCC in developing the United States' position on matters to be negotiated at the convention.

Another important issue facing the DBS industry involves the determination of what DBS technical standards, if any, should be adopted in order to maximize the benefits of DBS service to the American public. USSB recently submitted a petition to the FCC requesting the formation of an advisory committee to examine this question. It is our belief that all DBS receivers should be capable of receiving every DBS transmission. We hope that the FCC will act on our proposal in the very near future.

As we look to the future, USSB believes that it is in the best interest of the American public for all telecommunications technologies to be able to compete strongly and fairly in the marketplace. It is this guiding principle that has served our nation so well and which will allow DBS and other technologies beyond DBS to create new information resources without depleting existing resources.

Thank you.

[The following information was subsequently received for the record:]

Questions of Senator Pressler and the Answers Thereto

Question 1. What are your thoughts on the necessity of Federal Communications Commission action on technical standards for direct broadcast satellites?

Answer. United States Satellite Broadcasting has filed a petition with the Federal Communications Commission requesting the FCC to establish an Advisory Committee to consider whether technical standards for direct broadcast satellites are necessary and if so, to recommend to the Commission specific standards. USSB believes the public interest would be served if basic standards were established so that the public could receive all DBS signals with one receiver. DBS operators would compete on the basis of program and other services to the public rather than in the area of technical systems.

Question 2. What is the USSB position on the imposition of mandatory carriage regulations on cable operators?

Answer. USSB would permit the market place to determine the program services carried by cable television systems rather than have the Government make that determination through regulation. However, if signal carriage is mandated, then direct broadcast satellite systems should be treated similar to terrestrial television stations, and cable television systems should be required to carry one free advertiser supported program channel of each DBS system.

Questions of Senator Gorton and the Answers Thereto

Question 1. Is direct broadcast satellite service in actual operation or is it still in the developmental stage?

Answer. There are no direct broadcast satellite systems in operation. Presently, it is anticipated that such service will commence in 1986.

Question 2. In which communities is this technology available or expected to be available?

Answer. When fully operational, direct broadcast satellite service will be available to all communities. Residents must, however, install the necessary receive equipment.

Question 3. How many channels will DBS offer it subscribers?

Answer. Presently the Federal Communications Commission has granted eight applications for direct broadcast satellite systems. When operational, these eight systems will provide 36 channels of service. In addition, there are five applications for direct broadcast satellite systems pending at the Commission which propose a total of 34 channels.

Question 4. Is DBS capable of offering two-way service?

Answer. If the question is directed to two-way services to individual homes, the answer is no due to the comparatively high cost of an uplink station (the station which transmits the signal to the satellite). It would be possible, however, to use the telephone for the return information.

Question 5. How does the transmission capacity of DBS (i.e. the amount and type of communications service offered simultaneously over DBS) compare to that of cable services?

Answer. New cable systems can offer more channels of service than will be available from individual direct broadcast satellites. However, the types of communications services, other than two-way communications, would be expected to be similar.

Question 6. How does that cost of receiving DBS service compare to that of cable?

Answer. Direct broadcast satellites will make available both free over-the-air advertiser-supported television channels and subscription television channels. As to the former, once a receive unit is purchased there would be no further charge to the public. The subscription service would require a monthly payment to the programmer, undoubtedly priced competitively with paid cable program services.

Question 7. What is the capital cost of constructing a DBS distribution service?

Answer. The estimated capital equipment costs for USSB's distribution system (three in orbit satellites, TT&C and uplinks) is between $325 million and $350 million dollars.

Question 8. How much time will it take to recover those costs?

Answer. The time in which the costs will be recovered is dependent on the type of financing ultimately selected. Based on USSB's current projections, it could vary from three years to seven years.

Question 9. Is DBS technologically available to everyone in this country? That is, will everyone be able to get a clear view of a satellite?

Answer. While DBS will be available to most persons, it will not be directly available to everyone who elects to install a receive unit. The ability to receive the signal is affected by such factors as terrain and weather.

Question 10. In the Wall Street Journal of June 28, 1982, Gus Hauser, the Chairman of Warner-Amex Cable Communications, said that DBS will not be a major competitor to cable, except in areas that cable could never enter. He called DBS "retrogressive" and said that DBS's three channel service will not compete with cable's 100 channel service offered for the same cost. Will you comment on his statement?

Answer. Initially, it is expected that DBS will be most attractive to viewers who do not have cable television service. However, with the ever increasing cost of laying cable, DBS will become a more attractive program delivery system. This is particularly so when DBS delivers the 70 channels of service proposed by the present applications which have been granted or are now pending before the Commission.

Senator GOLDWATER. Thank you.

When I ask anyone of you a question, if the others want to comment or chime in, just go right ahead. We will start with Mr. Parker.

Do you have any figures that could indicate the percentage of total television viewing that cable now accomplishes, cable versus over-the-air television?

Mr. PARKER. I don't have accurate figures at my fingertips, Mr. Chairman, but in general the network market share has gone from an average in the 90 to 90-plus range down to range of 80. We project that it will go down toward 70 by the end of this decade.

People who have taken the audience away from the networks so far have been very heavily the independents, particularly the UHF, over the last 5 years, and the syndicated programing that draws people to independents. The competition in markets that are served by cable are making a very distinct inroad into the audience time, particularly the successful pay-cable operators like HBO.

My impression, and this is just an impression, is that in households which have cable and the full range of pay services, and subscribe to an HBO-type of service, upon occasion pay cable services will get audiences that are bigger than any network audience when they are running a particularly attractive show, but it depends on the day of the week and the event.

Historically, and I think this is rapidly changing, it has been my impression that the programing for pay services was done principally to attract and retain subscribers as opposed to being principally directed to get viewing.

If you are running an advertiser supported network, viewing is critical because that is what the advertisers need to sell to. The pay services need the opposite, they need the subscribers. I think that with increased competition coming, you will see even more competition for audience from the pay services.

Senator GOLDWATER. Thank you.

Again, Mr. Parker, what do you see as a future for teletext and videotex, and in what ways is CBS participating in these new technologies?

I might add, in answer to the question I asked earlier about the number of words in an average newspaper, a member of the staff very hurridly checked this morning's Washington Post. There are about 3,000 words to a page, and 118 pages; that is 364,000 words. When we sit here and realize that we can put about 25 billion words in a millisecond, it might be nice to think of the day when you just punch a button and not have to walk out in that snow to pick up your paper.

Could you comment on the question that I asked you, or would you like me to ask it again?

Mr. PARKER. No, thank you, Mr. Chairman.

We see teletext and videotext, both technologies as being competitive in the near term. We presently have an application pending to the FCC for the approvals necessary to allow us to begin teletext service, which we hope to begin later this year.

The actual build up of teletext service and the actual delivery of service will be dependent upon the electronic receiver manufacturers manufacturing and marketing appropriate receivers. We believe that the service will build up quite rapidly over the next few years.

With respect to videotext, besides CBS's interest, I would like to point out that, at a seminar held for the multiple clients of Booz-Allen and Hamilton that sponsored some research last December, there were over 50 corporations—many very big and major corporations—interested in the Booz-Allen study on the future of videotex. So it is not only CBS, it is a host of companies that are going to be very interested in moving into this technology.

Senator GOLDWATER. Would you explain briefly how long the FCC has been holding you up on teletext, and what is the problem?

Mr. PARKER. I don't think that it is fair with respect to this to characterize it as holding us up. We expect that approval to come in due course. This is not quite the situation that Mr. Raines described on the MDS service. We think that approval of our request will be coming within this year's timeframe.

Senator GOLDWATER. If it doesn't come, will you blow a whistle?

Mr. PARKER. Yes, sir, and we appreciate that.

Senator GOLDWATER. Thank you.

Mr. Bodman, before I ask you a question, you say that in 1986 your 2½ or 3-foot dish will be ready for the market?

Mr. BODMAN. Yes. It is not a question of dishes so much as it is our satellite. It takes that long to construct and launch a satellite.

Senator GOLDWATER. I understood that it was about ready; like this year or next year. Is the market ready for the receiver end, the descrambler if that is necessary?

Mr. BODMAN. I want to say that our system is designed so that everything becomes ready at about the beginning of 1986. The satellite takes about 36 months to construct and another 3 or 4 months to test and launch.

There is a long leadtime to prepare for large productive capacity for these domestic receivers that we are talking about. We can produce these receivers today in the laboratory in very low commercial quantities, but we can't produce them for the hundreds of thousands or millions of subscribers that we would like to connect up with.

Senator GOLDWATER. What are we talking about in the way of money for a complete satellite reception? Today, if you wanted to get into that field, it runs from around $1,000 to $30,000, and the dishes run from 9 feet to 16 or 18 feet.

Mr. BODMAN. We expect that homeowners in 1986, if they wanted to acquire the entire receiving equipment, could do so on the order of $300 to $350. If they want to acquire it from us on a monthly lease basis, or maybe from some independent rental or leaser, we are talking about $14 or $15 a month for the hardware.

Senator GOLDWATER. Would that be your service charge?

Mr. BODMAN. No. Our service charge for the programing, we expect to be somewhere on the order of $14 to $18 a month also.

Senator GOLDWATER. If multichannel proposals such as Microband's are granted by the FCC, what impact do you think that will have on the future of DBS?

Mr. BODMAN. Frankly, we don't think that it will have a very significant impact on the future of DBS. The reason our company is committing so much money into the DBS area is that we believe that it is a vastly more efficient method of reaching the public, because it will reach anybody in the country with pretty much the same level of picture and quality.

We don't feel that MDS is a significant factor for us.

Senator GOLDWATER. Thank you very much.

Mr. Franco, you seem to be having trouble with the FCC, along with a lot of other people, with your microwave proposal. You have spent 7 years. What is the problem?

Mr. FRANCO. Let me go back to the beginning. About 7 years ago, a petition was filed with the FCC seeking to provide additional channels to MDS at that time. Nothing happened for about 4 years. About 3 years ago the FCC actively started pursuing looking into the petition and has been since that time.

I think basically the problem is that there was a perception that the ITFS industry was making much greater use of the channels than actually is the case. I think that at this point in time that issue has been resolved. As I mentioned before, we and the FCC have, I think, concluded that approximately only 11 percent of the channels available to the ITFS people are being used in the top 150 markets, and considerably less than that in the smaller markets.

I believe that once the FCC came to that conclusion, they have proceeded a pace, and there is ongoing work now. There is, we believe, a draft document circulating or about to be circulated, and we are hopeful that within a short period of time, a month or two, we will see some action.

This is too good an opportunity, we think, to ge mired down in bureaucracy. It really should get out into the marketplace where it will provide, we think, that competition that your bill envisions. We think that it would be useful if we could just get it out. We believe they are on that track now and we hope that they stay that way.

Senator GOLDWATER. Am I right that it is only Los Angeles and Washington that make full use of the GigaHertz frequencies?

Mr. FRANCO. There are relatively few markets that are fully saturated. I don't believe Washington is fully saturated. Even in those cases where the marketplace is "fully saturated," many of the uses are point-to-point uses, and could be, if we wanted to, switched to other frequencies that are readily available without hurting anybody.

For example, we found that about 27 percent of the existing utilization is a point-to-point utilization. We are not proposing that anybody lose anything in those markets where it is "fully utilized." It would not be difficult, at our expense, to change the frequency.

Senator GOLDWATER. So you are flexible?

Mr. FRANCO. We have proposed all along that we would not be taking any frequency from anybody and that we would bear any cost of moving to alternative frequencies. Incidentally that proposal is a lot more than in the DBS case. In the DBS case, the Commission said "all existing users get off, and that is your problem." We are proposing that no one be hurt, no one lose any channel capacity, and that all costs of accommodating them be borne by us.

Senator GOLDWATER. Thank you.

Would you please elaborate on your Urbanet proposal and tell us what action the FCC is taking with respect to that proposal.

Mr. FRANCO. That is the proposal we are talking about.

Senator GOLDWATER. It is the same one.

Mr. FRANCO. It is the same proposal. Our proposal is simply that we would take existing MDS systems, which are single-channel systems presently operating in some 130 or 140 markets and expand those systems so that additional channels would be added to them simply by adding additional transmitters to existing sites.

Those transmitters would transit in an omnidirectional fashion using a microwave frequency, using existing technology. Nothing new has to be invented or created. They would transmit out over a radius of approximately 20 to 25 miles to receivers.

These receivers would be combined with the existing telephone system to provide a two-way system, a true two-way system. The homeowner would be able, by touching a button, to order programs or make transactions such as home banking. And this will be done on a national level. It would not be strictly local.

The two-way cable system, for example, is strictly local. There is no national hookup. What we are proposing to do is to make the two-way aspects of this system truly national in scope using the existing inplace telephone system. No new technology, as I said, is involved. The timeframe to do it, because of that, is relatively short. We could be up and operating within 6 months of the FCC grant in the first market.

That is what is so much of a problem in this case. The FCC is preventing service to the public. In the major markets today where cable is not, there is a tremendous unsatisfied demand for these services, and we could be satisfying that demand with an innovative service at a very low cost.

A point that was made before about a $300 receiver. MDS would provide the lowest cost method of getting a multiple-channel system into the home. The cost of the MDS receiver would be in the range of $200.

This would not necessarily mean that MDS would destroy cable. I don't believe we would because we would have only five channels. We would be forced to sell a lower priced product in order to get a market share. We would be able to get in there quickly. We would be able to provide a product that the public wants at a cost that is reasonable we believe.

We believe that it is innovative, and we wish that the FCC would get on with it.

Senator **Goldwater**. I understand that you have a nice presentation of this whole thing, and I am going to ask my staff to arrange a meeting. I would like to see it because in my State we have great need for all of these services, and I think one Indian Reservation is now using microwave.

Mr. **Franco**. Probably, but I am not familiar with it. It is operating now in some 150 markets around the country, some very small ones. The only thing that has kept it from expanding further has been the lack of channels. It is very difficult to compete in markets, as Mr. Bortz said, with only one channel, and where the product is being marketed at essentially the same price as the cable. That has been the only holdback on it to date. As I said, we just hope that we can get on with it.

Senator **Goldwater**. Thank you.

Mr. **Franco**. We will be glad to come and give you a presentation.

Senator **Goldwater**. Mr. Raines, what is the current relationship between the private cable industry, the SMATV operators, and the commercial cable industry?

Mr. **Raines**. If you define the commercial cable industry as the franchised cable industry, the relationship is one that we look at the franchised operator from probably two different perspectives. We look at it from one angle, and they look from another angle.

We see the private cable operator as being a part of the overall cable telecommunications industry. When we started this industry over the last few years, it was because there was a market that was being totally underserved and ignored, in many cases, by the franchised cable operators. We looked at that market and found a market we could serve by staying on private property.

We go to an apartment complex owner or a condominium group that didn't have cable, and enter into a contract with that owner or the condominium group to package programing and bring it via satellite or other sources to the site. We then build a fully operational cable system entirely on private property.

The contract that we hold with the condominium group or the apartment owner gives them certain rights to restrict the use on his land, just as the city restricts the use of the franchise cable operator in using public rights-of-way. In many cases, we pay the owner of the property a royalty for the use of his land to reach the people.

We were able to do this because the technology has been improved and prices have been lowered to the point where we can build a fully functional cable system to serve these private communities.

You know that many of the cable systems in this country today serve less than 1,500 subscribers. This is exactly what we are doing. We are building private cable systems of less than 1,500 subscribers in practically all cases, sometimes as low as 300 potential subscribers, and we have found that we can serve that market very profitably and do a very efficient job. We provide a source of competition as well.

We didn't have a problem several years ago until the franchised operator began to realize that perhaps part of his potential market was being eroded. Or what he called "his" market. Our position is that he doesn't have an exclusive market. He had obtained the right to use the streets. But he then took his nonexclusive franchise to mean that that whole market under that franchise was his to develop and to operate. This is where the problem has come in. The problem we are facing is that the franchise operator feels and acts as if this nonexclusive franchise gives him the exclusive right to the entire market within that jurisdiction.

Senator GOLDWATER. Thank you very much.

Mr. Fountain, what would you say distinguishes your application from the other DBS applicants?

Mr. FOUNTAIN. I think the primary difference is that our basic channel will be advertiser supported, and we will in association or partnership with local television stations. We will be managed by experienced broadcasters, and have already attracted some executives from the network television field.

We expect that we will be able to compete with the new technology as has already been described, which is a very, very efficient one, and take advantage of the network concepts that exist today.

I don't believe nor do I understand that there has been any other proposal that is similar to this, and I think that would be the distinguishing characteristic.

I think also that we very definitely plan to involve ourselves with some new program forms that I think I have touched upon, and this again I think is a distinguishing characteristic for USSB.

Our timetable is comparable to the one that has been described to you by Mr. Bodman. Our technology is quite similar. The cost of our satellite will be just as expensive.

But I do think that we are different in terms that we will be in combination with the local broadcaster and run by broadcasters, and that we will be advertiser supported.

Senator GOLDWATER. Thank you very much.

I want to thank all of you, gentlemen. You have given us some very interesting information, which I know will make good reading. My thanks for coming.

Panel 3 can come up and be seated. Mr. Sol Schildhause, Neighborhood Television, Inc.; Mr. William Wewer, Subscription Television Association; Mr. Richard Hutcheson, president of American

Low Power Television Association; Mr. R. E. Turner, III, chairman of the board and president of Turner Broadcasting System, Inc.; and Mr. Jerry Hoiley, vice president of broadcasting, Stauffer Communications, Inc.

Gentlemen, the same statement I made before applies. If you have prepared statements and you would like to have the entire text put into the record, it will be done. Then you can pick out the highlights. You know about the lighting system up here. When I ask a question, you can all chime in. If you want to argue amongst yourselves, if you have nothing else to do, it is a great idea.

Mr. Schildhause, we will start over at your end.

STATEMENT OF SOL SCHILDHAUSE, NEIGHBORHOOD TELEVISION, INC.

Mr. **Schildhause**. I have submitted the full text of my statement, Senator, and I trust that it will be made part of the record.

Senator **Goldwater**. It will be done.

Mr. **Schildhause**. If I may, I will briefly summarize my testimony.

My view is that the purposes of S. 66 are faultless, but that the bill does not go far enough to exclude government, and I mean government of any kind or at any level, from interfering with journalistic enterprise, and in jouralistic enterprise I include broadcast television and cable television, both of which involve the movement of intelligence and ideas.

I want to make it clear that this is no ordinary slam against government. The Lord knows there are plenty of things for government to do. What I do urge against, however, is an official presence that can influence how we communicate with each other.

Simply, Government regulation in this field is a contaminating force on the free flow of ideas and expression, and I would like to draw on two examples of how a government presence obstructs the growth and natural evolution of the media.

In broadcast television, Neighborhood Television is an applicant for translater facilities in the principal U.S. population centers. The applications are a part of an ambitious proposal to launch a new television network, the backbone of which would be satellite-connected translator stations that would rebroadcast the program offerings of a station in Prescott, Ariz., that carries the call letters of KUSK-TV. The program service to be offered nationally reflects small towns, rural populations, patriotic and historic events, old fashioned values, in short, the values of family living.

All of the Neighborhood applications, 141 of them, were filed for stations in the established translator service, and all of the proposals are in strict compliance with the existing translator rules. By every rule and by every precedent, those applications should have been quickly granted, but the FCC, soon after the Neighborhood filings were made, launched its low power proceedings to establish a TV service for minorities.

In a complete and dubious break with the way these things are always done, the Commission invited applications for that service before the new service was established. Some 8,000 applications jumped the gun, and all were given competitive status with Neighborhood's proper applications. So that now, almost 3 years later, not one of Neighborhood's applications has been processed. Worse, there isn't a low power TV service either.

All of that is simply because the Commission interfered in the natural market process, and is prefering minority programing over Neighborhood TV's programing. The point being that Government is just inept when it comes to engineering these elusive kinds of social changes.

In cable television, the FCC, beginning early in 1966, imposed a freeze in order to keep cable out of the major population centers. Although other reasons were assigned, the truth is that the Commission just wasn't ready for the impact of cable and didn't know what to do about it. So the Commission responded by instituting a freeze while it spent the better part of the next decade groping for a solution. That freeze lasted until 1972. Cable has been playing catch-up ever since, and the American public has been deprived of service.

Now even more menacing Government moves are surfacing. In cable franchising, for example, the American public is witness to the bizarre spectacle of cities and other local jurisdictions extracting the most oppressive of concessions in exchange for the right to conduct a legitimate cable business. It is almost as if the process is being designed to make sure that cable doesn't work, and it is all unnecessary and illegal.

It is unnecessary because none of the regulators can point to abuses in cable television. It is illegal because although local governments have the power to keep cables, wires, and trucks from endangering public health and safety, regulation may not in our system, I submit, legally intrude on free expression, but that is exactly what local requirements for free services, for 100-plus channels, for institutional networks, and all the other extremes amount to. They interfere with and obstruct the way in which a communicator, a cable operator, might otherwise want to deploy his resources in transmitting ideas and information.

Local franchising practices have the same chilling effect on cable's evolution as did the FCC's restraints in the last generation. But so entrenched are these local forces, and so committed are they to goal line stands in defense of their turf that only Federal preemption will oust them. The FCC or, even better, this Congress, must say to local governments, "You can make them put rubber tires on their trucks, but otherwise keep hands off."

Now at the Federal level there is another intruder. Cable finds that the space vacated by the FCC's dropping of distant signal limitations is being filled by a new force in the field of Government social tinkering, in the form of the Copyright Royalty Tribunal. By placing a prohibitively high price on cable's carriage of signals, newly permitted to be carried following the FCC's dropping of its signal limitations, the tribunal has in effect decreed that the FCC's distant signal rules are as good as in place again.

If I may just have just a moment, Senator.

As a result of the decision of the Copyright Royalty Tribunal, today's cable operator no longer elects to carry Channel 17 from Atlanta, or Channel 9 from Chicago or New York. Instead, he asks, what was I permitted to carry under the old FCC rules, because you see that is the informational content that the tribunal's decision drives him to. So we are witness again to how Government interference in journalistic enterprises distorts the way the media communicate ideas and creativity.

Let me cut off here. I wish I had more time, but let me cut this off by saying that the cable copyright and the regulatory excesses at the local level are, I respectfully submit, this committee's communications business.

[The statement follows:]

Statement of Sol Schildhause, Chairman Program Committee, Neighborhood TV Co.

I am Sol Schildhause of Washington, D.C. And, I am an official of Neighborhood TV Company, Inc., a company that was formed to establish a new, nationwide television network that it was expected would compete for audience and business with CBS, ABC, and NBC. Neighborhood TV is financially backed by Allstate Insurance Company's venture capital group.

The plan for the new network was conceived about three years ago. A lot of effort has gone into it; a substantial amount of money has been expended. At conception, there were two principal aspects; (a) Whether such a network is viable is obviously something to be tested in the open, competitive market. But, the principals of Neighborhood TV understood about that gamble. Before that test cound be faced, however, it was clearly necessary to have the technical apparatus in place. (b) The technical feasibility was, on the other hand, considered a sure thing. The plan contemplates a network of satellite interconnected translators, the programming of which will originate from a new, regular TV station in Prescott, Arizona. Technically, there were no problems to be anticipated—the translator service is an old established service; the FCC had several years earlier crowed about the new opportunities that were available from inexpensive interconnection by Satellite; new networks are what the Commission repeatedly declares are needed if there is to be new diversity from broadcast television; and the Commission's own staff informally assured us on several occasions that our applications would be quickly and routinely processed to grant.

And, so, Neighborhood TV Company filed, beginning on September 2, 1980, 141 applications for new translator stations to be installed in the major population centers of the country. The originating station is in place and operational as Station KUSK-TV in Prescott. An order for satellite transponder space has been entered and the interconnection is now at the ready. The combination will, of course, constitute a new network, and it was expected that the Commission would applaud and nourish the effort.

That is not the way it is working out. With the filing of Neighborhood's early applications, the Commission's apparatus was almost immediately galvanized into moving to shut off the proposal for Neighborhood's competing new network. The details of how that is being accomplished will be supplied below. But, this episode and others—notably the 20-year history of the road-blocking of the development of cable television as a competing new medium—amply demonstrate the wisdom of S. 66 in trying to limit the role of government in regulating these media of mass communications.

Simply, the institutions of government have no place in attempting to regulate the media of communications—not newspapers, not handbills, not the printing press, not books, not magazines, not broadcast television, not cable television. After more than 50 years of experience in regulating radio, it is now clear that government is at best inept, often worse than that in trying to channelize and to engineer literary, artistic, and journalistic forms of expression.

Neighborhood's proposal is for a network that will feature "Americana"—the overall theme is expected to emphasize patriotic and historic events, old-fashioned values, the virtues of family living. Individual ideas include country music, rodeo, local little-theatre, children's programming focused on growing up in rural America, classic American western drama—Zane Grey, for example, how-to-do-it programming in hunting, fishing, camping, and other "Western" interests, features on family living with emphasis on traditional American values—in short, a panoply of Americana.

The proposal has, however, been ambushed by an FCC proposal to create a new low-power television service for the benefit of Blacks, Hispanics, and other minorities. By favoring that service over the service proposed by Neighborhood, government has placed itself in the position of declaring itself on the relative values of what is clearly journalistic enterprise. In doing so, government has demonstrated again that it does these things badly. For example, as will be shown below, the Commission acted illegally in the way in which it shunted the Neighborhood applications to the back burner more than two years ago. And, as will emerge from the recitation that follows, there was no need for the Commission to make a choice between the two—Neighborhood's new network service and a new low power service can both be accommodated and can be permitted to flourish simultaneously.

Finally, there is abundant evidence that a bogged-down Commission cannot figure out how to get the new low-power service meaningfully under way and that the service, if it is ever launched, will turn out to be a pay-TV, movie and sports service of little or no specially recognizable value to Blacks, Hispanics, and the other minorities for whom the service was created. And, so, there is after all these years no Neighborhood TV network and nothing that can seriously be called a low-power TV service. Nor, the way these projects are being regulated, is the outlook hopeful.

THE FCC AND THE TRANSLATOR/LOW POWER MISADVENTURE

As stated, the backbone of Neighborhood's network would be the interconnection of inexpensive and now unused UHF stations to be built in the principal population centers of the nation. These little UHF stations go by the formal name of "translators." The translator service is an old and established service, having been conceived some thirty years ago as an affordable technique for extending or boosting TV service into remote areas or for filling in bad reception spots in the service areas of full-service stations. The are basically repeaters, in that they pick up the signal of an operating station and merely extend it out. They are called translators because they always pick up the signal from, for example, a channel 4 and translate it to and send it out on anther channel, perhaps channel 30, that is not in use in the area and therefore will not interfere with existing signals.

There are thousands of these translators in operation. Some are operated by full-service stations in order to extend their reach; others are operated by community groups wanting to bring TV service to remote areas. They offer limited coverage—a radius of perhaps 10 to 15 miles in all directions. They work as well in large cities as elsewhere. And, the FCC's licensing policy has traditionally been hospitable and very lenient in giving the green light to those interested in installing these low-cost, booster-type stations.

Keeping that kind of station in mind, let me switch gears for a moment. Serious critics of the telecommunications industry have for decades been decrying the lack of variety that characterizes the offerings of the three principal network suppliers of the television programming that all of us are basically locked into. And the FCC has, for its own part, also been wringing its hands and declaring how necessary it is to have more national networks in order to bring diversity to television. Periodically—about every decade or so, it seems—the agency establishes a task force or study group to inquire into the problem. The most recent report of such a group was published in October, 1980.

Inevitably, and quite predictably, the reports of these groups reinforce the judgment that only more networks—not individual and unconnected stations spotted here and there—but only more networks can bring diversity. That is so because only a network with a sufficient audience base can finance the costs of quality programming by spreading these costs over a lot of affiliated stations and across a number of markets. Inevitably network might start up is always said to be slim because of the shortage of available facilities in most markets. Simply, in other words, because there is no fourth station in many of the TV markets below the top-50, there is no opportunity for another network to build up to 150–200 local affiliates in order to compete on a nationwide basis.

But the translator phenomenon, it will surely occur to this Committee as it did to us, does offer the prospect of meeting the shortage of available facilities. And even the plaguing costs of interconnecting these stations by traditional means such as wires or microwaves was resolved by the development in the late 1970's of satellite interconnection. That is, an originating signal can now be sent up to a satellite and distributed downward over the whole continent for inexpensive reception at each point of translator operation.

Out of that meld of circumstances was born the concept for a new and inexpensive nationwide TV network. And, so, Neighborhood TV Company filed, beginning on September 2, 1980, 141 applications for new translator stations to be installed in the major population centers of the country. That was the plan and the potential of the heroic concept that Neighborhood TV launched back then. But, what has occurred is a burlesque of agency misadventure. And, so, what started out full of hope has languished without movement. Not a single one of Neighborhood's translator applications has been granted even though they were filed in strict accordance with the translator rules and despite assurances by the Commission's staff when the applications were being developed that they would be "routinely granted because they are translator applications."

The fact that Neighborhood's plan for a new network is not being permitted to get off the ground will come as no surprise to the Commission's most recent Network Study Task Force that I alluded to earlier. It was their judgment that the FCC's own actions over the years have been inconsistent with the Commission's declared interest in new networks. You will find some of the details set out in the attached clipping from the New York Times. The precise language of the network study group (page 4 of its Report of October, 1980) is that: ". . . the Commission limited the ability of new networks to enter and sacrificed the potential improvement in network competition in order to achieve some other goals. In no case have these other goals been realized."

With its latest treatment of Neighborhood TV's proposal for a new network, the Commission is proving how hard it is to break old habits. Simply, the Commission is doing it again—it is shuffling to a back burner a serious proposal for a new competitive nationwide network and hiding it behind the curtain of a proposed new television service, the goals and viability of which are dubious but which will eat up a decade before that gloomy estimate definitely proves out.

All of this is coming about because in the closing days of the last administration—specifically on September 9, 1980—there was announced a proposed new program to help racial and other minorities by letting them file for a kind of translator station that is dubbed "low power". The difference between the two—between a translator station and a low power station—is that the latter would not be tied to a regular full-service station, would be permitted to program without restriction, could even offer over-the-air pay television.

The announcement of the proposal was via the conventional rulemaking route that requires notice, comment, and deliberation. But, in a complete break with precedent and logic, the Commission announced that it would accept applications and would authorize the new stations on an interim basis, even though the institution of rulemaking on September 9, 1980 was in effect a posing of the question of whether the new service should be established.

In response to that curious invitation to file interim applications—and realistically it was an invitation to jump the gun in anticipation of the final result—some 7,000 to 8,000 applications have been filed. The FCC itself does not state with reliability how many of these applications are on file. Worse, they were all given competitive status with the applications of Neighborhood TV and others who had applied for regular translator stations in the established service.

It will help clarify if I note here that it is a firmly and long-established legal principle that when two or more applications are filed for the same stations (i.e., the same channel in the same community), none of the applications may be granted without a comparative proceeding that most of the time goes on for years. Because the Commission conferred full competitive status on these low power applications that were filed before they could be made lawful by the establishment of the service after a proper rulemaking, Neighborhood's legitimate applications were in most cases thrown into comparative status with these premature filings. And all of these contests are now absolutely stalemated and in an indenfinite deep freeze.

The whole nature of the notice and comment process in rulemaking has to do with assuring access by the public to an open-minded Commission that is not irrevocably wedded to a particular course of action in advance of the submissions by persons interested in the rulemaking. Any other view would make little logic, would reduce the rulemaking process to a ceremony or a rite for rubber-stamping pre-conceptions. And there is a considerable body of law having to do with disqualifying decision makers on findings of prejudgment. See *Association of National Advertisers* v. *FTC*, 627 F. 2d 1151 (1979) cert. denied 447 U.S. 921 (1980) and cases cited therein.

Expectably, because of the invitation to file in anticipation of the result, charges of prejudgment have been leveled in this low power proceeding from a broad spectrum of interests. In addition to Neighborhood TV's contention, the National Association of Broadcasters (NAB) and the American Broadcasting Companies (ABC) also offered objection. See Memorandum Opinion, 48 Pike & Fischer Rad. Reg. 2d 1197, released January 16, 1981. Even the National Telecommunications and Information Administration suggested various alternatives to the Commission "to avoid the appearance of prejudgment." Id., at para. 22. In response to all of these, the Commission's public documents have become stridently defensive.

Simply, the self-serving plea of innocence is overwhelmed by the evidence at hand. First, the interim acceptance of applications prior to the actual establishment of service was a departure from unbroken precedent at the Commission. One need look no further than former FCC Commissioner Washburn's unguarded remarks (copy of excerpt, emphasis added, is submitted herewith) to the Texas Broadcasters Association on February 18, 1981 where he confessed that: "With respect to the low-power television docket, I would emphasize that the Commission's action on September 9, 1980, was only a Notice of Proposed Rulemaking to establish a low power television service. At that time we also established interim guidelines to cover the handling of low power applications during the rulemaking proceeding. *This was unusual. We usually do not process applications until we have a service in being, but under existing FCC rules, there is no such thing as lower power television.*"

Next, the filing of some 7,000 to 8,000 applications is an overwhelming reading by those knowing types in the television industry that they regarded the low power service as a shoo-in. And, in fact, it did turn out to be a foregone conclusion because the Commission did finally establish the service in mid-1982.

Almost embarrassingly, it now appears likely that most FCC Commissioners went along with the proposal because it was assumed that there was no turning back. How else can the candid expressions, as recorded in the attached clipping from Multichannel News for April 12, 1982, be explained. Thus, a consensus of six Commissioners speaking on a panel at the NAB convention are said to doubt the "viability of low power TV." According to Commissioner Fogarty: "The only thing we have that's worse is CB radio." Commissioner Quello was of the view that: ". . . licensing problems will probably prevent low power from realizing its potential as an inexpensive media outlet for minorities. . . ." And so it went. Another observer—Broadcasting Magazine also for April 12, 1982 (copy attached herewith)—saw and heard the consensu the same way. In fact, according to Broadcasting: "The commissioners" [Fogarty's] responses to a question from NAB executive vice president and general manager John Summers, who moderated the panel, caused some in the audience to wonder *how* the order creating the new low-power television service was *approved unanimously. . . .*" (emphasis added).

"How", indeed! A new low power service has been established that individual Commissioners seem dubious about. The law and precedent were stretched and broken in order to invite premature applications that were given the kind of competitive status that has held the Neighborhood TV newwork concept at bay. And all in the name of creating a service in the ostensible interest of minority participation.

But, Commissioner Dawson acknowledged last December 1, 1982 in a speech to the National Conference of Black Lawyers that: ". . . only 200 minority applications were filed for low-power television licenses out of the 5,000 applications that the Commission has already received."

So, a new nationwide network of conventional translator stations as proposed by Neighborhood TV has been shelved because the Commission found it necessary to intrude a new low power TV service for the benefit of minority ownership. But, it turns out that minority applicants are not interested, according to Commissioner Dawson. Curiously, that didn't even cause the Commission to pause. It went right ahead to finalize the service on March 4, 1982.

Parenthetically, it may be observed that petitions for reconsideration of the order establishing the low-power service have pending for more than six months. It may be inferred from that circumstance that the Commission is having difficulty in responding to the various challenges that have been leveled.

The mystery of it all is why the Commission is going to all this trouble when the solution to all misgivings about the credibility of its program is so simple. All the Commission has to do to restore plausibility is to announce that all valid translator applications filed before the final March 4, 1982 adoption of the low power service will be processed without regard to the prematurely-filed low power applications. The Commission could then have its fourth network and, in the process, lose almost no benefit from its launching of the new low power service.

HOW GOVERNMENT CONTINUES TO MISMANAGE CABLE

The early history of the FCC's interfering in the CATV marketplace is extensively documented in the literature. Even current FCC Commissioners openly and publicly admit the official error of the Commission's regulatory program in the 1960's and early 1970's.

Beginning in early 1966, the FCC clamped a freeze on cable that effectively kept it out of the major population centers, permitting it a kind of free growth in the areas of the country that were less served by over-air broadcast television. The assigned reason—to preserve the broadcast television structure because the poor could not afford cable and because cable would not wire every market—was less a sign of protectionism than it was a manifestation of government's generally being unprepared for new developments. The FCC was not ready for the impact of cable, did not know what to do about it. And, so, in time-honored fashion the Commission responded by instituting a freeze, while it spent the better part of the next decade groping for a solution. That freeze lasted until into 1972 when a limited thaw emerged during the chairmanship of Dean Burch.

The pace of deregulation has been accelerated during the past several years. But, cable is not by a long shot free from federal government restrictions; and even more menacing forms of government intervention loom as the pace of FCC deregulation has picked up. As to the former, the FCC maintains restraining rules that require cable systems free of charge to the local stations to make their expensive wires and electronics available for the carriage of those local signals. Additionally, cable systems must make sure that network programs carried on local stations are exclusive and are not duplicated by the system's bringing in the same programs from an outside source. There are also restrictions on sports programming and there are various record-keepings and forms for the annual reporting of ownership, signal carriage, minority employment, and financial experience.

There has, concededly, been a substantial amount of deregulation. Franchising discretion has been largely turned over to local jurisdictions at the state, county, and municipal levels. And, most restraints on the carriage of distant signals have been abandoned. But, each of those gaps is being filled by other instrumentalities of government, and with practices that are, in the most charitable view, dubious interferences with the free flow of ideas and with the American view that the marketplace should be permitted to operate without unnecessary restraint.

In franchising, for example, the American public is witness to the bizarre spectacle of cities extracting the most onerous of concessions in exchange for the right to conduct a legitimate business, the sale of cable television services. Requirements that: the cable operator build 100 channel systems, give free services to various government institutions and public claimants, submit to onerous rate controls, pay exorbitant percentages of revenues to the franchisor—these are the currency of the relationships between cable operators and local governments. Not only is the process expensive, with the consumer again having to foot the bill for all the loaded paraphernalia of franchising, but it is all so unnecessary and quite illegal.

"Unnecessary", because cable is not a monopoly business—by way of simple example, cable cannot indulge in monopoly pricing; there are just too many competing technologies (other ways to see a movie, if you will), and that is the market phenomenon that will restrain cable's rates without any expensive intervention from government. And, "illegal", because although local governments have the power to regulate pursuant to the police power, that power does not extend to interfering with journalistic judgments. Regulations that compel the marking of street obstructions, that specifiy a minimum elevation of wires above street level are clearly within the local power to protect health and safety. But, requirements as to rates, as to channel set-asides, as to how the cable system is to be operated are clear intrusions into the right of the cable operator to communicate with his subscribers. That kind of regulation is not permitted with respect to broadcast television, is unthinkable as to newspapering. It is just as improper in cable television.

At the federal level, further, the space vacated by the FCC's dropping of distant signal limitations and of the requirements to protect syndicated programing exclusivity is being moved into by a relatively new entrant into the field of social engineering by government, in the form of the Copyright Royalty Tribunal. By placing a prohibitively high price on cable's carriage of signals newly permitted to be carried following the FCC's withdrawal from the field, the Tribunal has in effect decreed that the FCC's distant signal rules are as good as in place again.

The history of cable copyright is a prime example of how government tinkering debases journalistic enterprise. In the late 1960's, the Supreme Court decreed that cable television was not a performer when it repeated television broadcast signals. That seemed a logical result because cable, by erecting a community antenna, was merely performing for the home owner what he could do for himself. That, however, did not suit government's social engineering instinct. Consequently, and principally in response to demands from an FCC that seemed committed to the hobbling of cable, the copyright law was rewritten to declare that cable is a performer and must pay.

By the early 1970's when the copyright debate was heating up, there was ample precedent for the proposition that there was no way that cable could get permission from the Hollywood program suppliers to carry their programs. And, if they wouldn't sell, it followed that the cable operator could not go across the street because there are no other sellers. It was therefore written into the law that cable would not have to deal with the program suppliers, that cable would by law be deemed to have a license to carry the programing. "Compulsory license" it was called. And, all the cable operator had to do was to identify his system and pay for his signals.

"More than that", government said, "we will specify the rates in a statute and keep them within livable bounds". On the other hand, it seemed reasonable to provide that those rates be subject to adjustment from time to time to reflect inflation, changed conditions, and the like. There was thus created a 5-person Copyright Royalty Tribunal, another government agency. That new player in government's continuing inability to resist regulating this new medium of communication has just concluded a proceeding in which new rates were specified for certain distant signals. That schedule of rates has already changed the cable business. Cable systems, to the consternation of their subscribers, are being driven on a wholesale scale to dropping ch. 17 from Atlanta and channel 9 from New York and Chicago, thereby converting cable into something that government tinkerers perhaps want the industry to be but at the same time into something considerably different from what the cable operators want it to be.

The decision of the Copyright Roaylty Tribunal has been taken to court, and judicial relief is not out of the question. But, the outcome of that appeal will not unseat the Tribunal whose inclination and potential for trying to fine-tune journalistic enterprise are not established.

In both the local franchising and the copyright Illustrations, we find government at its worst. "At its worst" because it is government at its most dangerous—tinkering with journalistic enterprise, where government doesn't belong and where government does its most casually inept work.

On a final note, it is useful to reflect that just about all of the components of what is described as the "communications explosion" have in large part to do with various techniques for delivering movies and sports to a box office in the home. And that development, it may be observed, is related to the discovery only during the last five years that pay-cable works, that the American public is eager to pay for that service.

Perhaps it is merely coincidence—but the point may be honorably contended for that pay-cable has worked because it is just about the only aspect that government has kept its hands off. To demonstrate that point, it is the fact that the FCC has refused to regulate pay-cable and has at the same time preempted the field so that local regulation is also prohibited. The *Brookhaven* case, 573 F. 2d 765 (CA 2d, 1978), cert. denied, 441 U.S. 904 (1979) affirms that proposition.

Senator GOLDWATER. Thank you very much.

Next we will hear from Mr. R. E. Turner.

STATEMENT OF R. E. TURNER III, CHAIRMAN OF THE BOARD AND PRESIDENT, TURNER BROADCASTING SYSTEM, INC.

Mr. TURNER. Good morning, Mr. Chairman.

I appreciate the opportunity to testify on the potential impact of new video technologies on competition in the television industry.

For over 30 years the Government has sought to facilitate competition in television. The problem, of course, has been one of spectrum scarcity. There are simply too few conventional broadcast outlets to permit operation of more than three television networks.

Attempted solutions to this scarcity problem have included the creation of UHF television, and more recently proposals to drop in new UHF and VHF stations, or to create new services like low power television and direct broadcast satellites. However promising for the future, none of these alternatives has yet produced the desire result—increased industry competition and expanded consumer choice.

It is important, therefore, to distinguish the maturity and viability of each alternative distribution technology and communications policy analysis. Broadcast television, an infant technology 30 years ago, is now fully mature. Low power and DBS, while technically possible, on the other hand, have yet to demonstrate their economic and social viability.

Cable television lies in-between broadcasting and the undeveloped alternatives. Offering multichannel capacity and interconnected by a national satellite distribution system, cable now reaches over 35 percent of the Nation's 83 million television homes. It constitutes the most promising, indeed the only means for a new program network to be viable. This fact is amply demonstrated by the recent evolution of numerous pay and basic cable program services.

The pioneer basic cable service was, of course, Super Station WTBS developed by Turner Broadcasting. The Super Station is a nationally distributed cable service that integrates three separate television technologies. The primary signal is broadcast over Channel 17 in Atlanta, an independent UHF station. This signal is interpreted, intercepted, and relayed via satellite by an independent common carrier to 5,000 cable systems. These systems distribute the signal, in turn, to upward of 25 million homes.

The three established television networks aside, no one other program service reaches so many homes. In terms of the type of programs offered—general entertainment, news, and sports—the Super Station is also the closest substitute and most competitive alternative to the established networks. Thus, the cable distributed Super Station, of all of the available services, comes closest to fulfilling the twin communications policy goals of increased program diversity and marketplace competition.

Recently, however, your diversity and competition policy objectives have received a serious setback. I refer, of course, to the decision of the Copyright Royalty Tribunal this past November to freeze the growth of super stations by imposing a prohibitive fee on cable systems for the carriage of broadcast signals beyond a small minimum number.

This decision increased by up to 1,600 percent the copyright royalty fees that cable systems must pay for retransmission of the Super Station and other broadcast signals. Cable systems all over this Nation are now dropping these signals to escape this royalty fee liability.

Unjustified for the cable industry in general, application of the CRT's decision to the Super Station is particularly inequitable on both copyright and communications policy grounds. As a matter of copyright policy, the CRT decision ignored the fact that the Super Station, unlike other distant broadcast signals, pays copyright owners directly for program exhibition rights based upon its national audience. Imposition of a draconian second payment for this programing by cable owners is unjustified.

More important, however, is the catastrophic impact of the CRT decision on communications policy. Because cable systems cannot carry the Super Station at the CRT's new rates, many television markets will be foreclosed to us. This will restrict our program diversity and the competition the Super Station would otherwise bring to the public in those markets. Specifically, market foreclosure will inhibit amortization of program costs.

Second, the CRT decision restricts competition in television advertising because it denies advertisers the truly national audience they expect and demand. Markets like Rochester, N.Y., and San Diego, Calif., for example, will be denied to us.

The CRT decision veers from copyright policy into the realm of communications policy because it adversely affects the subcommittee's long held objective to expand consumer choice and competition in television. While we all hope that the promise of new technologies like low power, DBS, et cetera, will one day be realized in the market, the fact is that our best hope for expanding choice and competition lies today in the satellite cable delivery of Super Station WTBS.

I, therefore, respectfully urge you to reaffirm your communications policy objectives by amending your cable deregulation bill to correct the inequities of the CRT decision at the earliest opportunity.

Thank you.

[The statement follows:]

STATEMENT OF R. E. TURNER III, CHAIRMAN OF THE BOARD AND PRESIDENT OF TURNER BROADCASTING SYSTEM, INC.

Good morning Mr. Chairman, members of the committee. I appreciate the opportunity to testify on the potential impact of new video technologies on competition in the television industry.

Since the demise of the DuMont Television Network over 30 years ago, the government has consistently sought to facilitate competition in television. The problem, of course, has been one of spectrum scarcity: there simply are too few conventional broadcast outlets to permit aggregation of an audience sufficient to support more than three television networks.

Attempted solutions to this "scarcity" problem have included the creation of UHF television, and proposals to "deintermix"—or separate—VHF and UHF stations by markets. More recent, have been proposals to "drop-in" new VHF stations, or to create new services like "low-power TV" and direct broadcast satellite television (DBS). However promising for the future, none of these alternatives has yet produced the desired result—increased industry competition and expanded consumer choice.

It is accordingly important to distinguish in communications policy analysis, the maturity and viability of each alternative distribution technology. While conventional broadcast television was an infant technology but 30 years ago, it is now fully mature and three commercial networks have evolved to dominate broadcast television. Low power and DBS, while technically possible, on the other hand, have yet to demonstrate their economic and social viability.

In maturity and viability, cable lies between broadcast television service and the futuristic, but undeveloped, alternatives, like DBS. Offering multi-channel capacity and interconnected by a national, satellite distribution, cable now reaches over 35 percent of the Nation's 83 million TV homes. It thus constitutes the most promising—indeed, the only—means for a new program network to reach a national audience.

Cable's versatility and viability as an alternative distribution technology is amply demonstrated by the evolution of numerous pay and basic cable program services in the past few years. The pioneer basic cable service was, of course, the superstation developed by Turner Broadcasting.

The superstation is a nationally distributed cable service that marries three separate technologies: the primary signal is broadcast over channel 17-Atlanta, a UHF TV station. This signal is intercepted and relayed via satellite by an independent common carrier to thousands of cable systems. The satellite signal in turn is distributed over those cable systems to upwards of 25 million American homes.

The three established television networks aside, no other program service reaches so many homes. In terms of the type of programming offered—general entertainment, news and sports—the superstation is the closest substitute and most competitive alternative to the established networks. Thus the superstation, of all services, comes closest to fulfilling the twin communication policy goals of increased program diversity and marketplace competition.

That cable TV and its satellite retransmission of superstation is the best—if not the only—practicable alternative to the network-broadcast station system has been recognized by Federal policy makers in a number of related decisions during the seventies. Starting in 1972, the FCC eliminated the "freeze" on the construction of cable systems; in 1976, the Congress granted cable a compulsory license for the carriage of broadcast signals and superstations in the new Copyright Act; and in 1979, the FCC deregulated signal carriage on cable altogether. It was this pro-competitive communications policy by the Government that encouraged me to create the superstation in 1976.

Recently, however, your diversity and competition policy objectives have received a serious setback. I refer, of course, to the decision of the Copyright Royalty Tribunal (CRT) this past November to freeze the growth of superstations by imposing a prohibitionary fee on cable systems for the carriage of broadcast signals beyond a minimum number. This decison increased up to 1,600 percent the copyright royalty fees many cable systems must pay for their retransmission of signals like that of the superstation. They cannot and will not pay these extortinate fees. Instead, cable systems all over the Nation are now dropping broadcast signals like the superstation.

As unjustified as the CRT decision may be for the cable industry in general, its imposition on the superstation is particularly inequitable on both copyright and communications policy grounds.

As a matter of copyright policy, the CRT decision ignored the fact that the superstation—unlike other distant broadcast signals carried by cable—pays copyright owners directly for program exhibition rights based on its national audience. Thus, as the superstation's cable audience has increased in recent years, our program prices have increased up to 1,000 percent. There is no reason to impose a draconian, second payment on cable owners for this programming.

More important from your committee's point of view, however, is the catastrophic impact of the CRT decision on communications policy. Because cable systems cannot carry the superstation at the CRT's new rates, many television markets will be foreclosed to the superstation. This restricts the program diversity and competition the superstation would otherwise bring to the public in those markets.

Specifically, such market foreclosure will inhibit amortization of the superstation's program costs. Already disadvantaged vis-a-vis the broadcast networks by cable's limited national penetration, further regulatory restriction of these cable markets significantly increases program costs on a per subscriber basis.

The CRT decision also restricts competition in television advertising because it denies advertisers the truly national audience they expect and demand. Markets like Rochester, N.Y. and San Diego, Calif., for example, will be denied to the superstation and its advertisers in perpetuity.

The CRT decision thus veers from copyright policy into the realm of communications policy. The program and advertising alternative the superstation offers to program distributors, television advertisers, and the viewing public will be significantly restricted by this decision in direct contravention of this committee's long held objective to expand consumer choice and competition in television. While we all hope that the promise of the new technologies like the low power, DBS and multi-channel MDS will one day be realized in the market, the fact is that our best hope for expanding choice and competition lies today in the satellite cable delivery of superstations like WTBS.

I therefore respectfully urge you to reaffirm your communications policy objectives by amending your cable deregulation bill to correct the inequities of the CRT decision at the earliest opportunity.

Senator **Goldwater**. Thank you, Mr. Turner.

Next we will have Mr. Richard Hutcheson.

STATEMENT OF RICHARD G. HUTCHESON, PRESIDENT, AMERICAN LOW-POWER TELEVISION ASSOCIATION

Mr. **Hutcheson**. Mr. Chairman, I appreciate very much the opportunity to testify here today representing the low-power TV industry.

The fact that there are 35 low-power TV stations now on the air is due in large part to the strong support for low-power TV from the members of this committee and from the Congress in general, and for that we are very grateful.

In my remarks, I would like to first assess the progress of the FCC in processing the backlog of low-power applications and, second, discuss the relationship between cable television and low-power TV.

Last year, the FCC told Congress that in order to handle all of the low-power TV applications, it needed three things: a lottery, a minicomputer, and increased funds and personnel. On every point, Congress delivered.

As late as last December, the Chairman of the FCC was testifying that with these tools in hand, the FCC could process 400 to 500 low-power applications per month by May of this year. Now, however, those of us who are involved with low-power TV are becoming very concerned that the Commission is backsliding.

Instead of 400 to 500 applications processed per month, we hear 200 to 300. Instead of May, we hear June or later. We heard that the word "processed" is a very slippery word which does not necessarily mean granting or denying an application, but simply some movement along the paper shuffle. In short, we hear that the Commission may not issue very many low-power licenses this year.

There is no doubt that processing the thousands of low-power TV applications is a tough job, but low-power TV is surely not more complex, legally or technically, than DBS, or some of the other new technologies with which the Commission is dealing.

If the Commission cannot figure out a way to get some results this year, low-power TV applicants have plenty of suggestions, and I have spelled out a few in my written statement.

If the FCC gets through 1983 without issuing more than a handful of low-power TV grants, it will be very difficult to escape the conclusion that the Commission is more interested in protecting existing services than in opening the marketplace to freer and greater competition.

We therefore respectfully request that this committee get from the Commission an explicit statement of exactly how many low-power TV grants they expect to issue this year, so that the committee can make a judgment as to whether or not the Commission is living up to the promises and the projections which were made last year, when Congress gave the FCC what it then said it needed to do the job.

Let me now move to the relationship between cable TV and low-power TV. There is no reason that this relationship need be competitive. Indeed, I predict that ultimately the relationship will become very symbiotic.

It is well known that cable operators often make extravagant claims about local-access programing in order to win franchises. Yet, few cable operators are really in the business of originating programing. They are in the business of stringing wire and retransmitting programing originated elsewhere.

On the other hand, low-power TV operators find local programing to be central. In fact, one low-power station manager is telling his viewers that "LPTV" means "local programing" TV, not "low-power" TV. It would be a natural relationship for a low-power station to take on the job of doing local programing in exchange for access to a cable system. However, standing in the way of this sort of voluntary cooperation is a legislative barrier which I would like to bring to your attention.

When the Copyright Act of 1976 was passed, low-power TV didn't exist. Because the act doesn't classify low-power stations as local signals, indeed, it doesn't classify them at all, a cable operator may be forced to classify a low-power station as a distant signal, which is absurd.

Given the royalty fees recently imposed on distant signals by the Copyright Royalty Tribunal, this may make it prohibitively expensive for a cable system to carry a local low-power station, even though the local low-power station may be the only source of local programing serving that community.

We, therefore, recommend that the act be amended to define low-power stations as local signals. It is useful to point out that the translaters are defined as local signals under the 1976 act.

Let me conclude by mentioning one other important reason some progress on low-power grants by the Commission would be desirable this year, and that is simply the economic impact.

A few weeks ago I watched a videotape of the construction of channel 43, which is a new low-power station serving Mountain Home, Ark. They started work on the station in October, and by January of this year they had the first local evening news on the air. In short, it doesn't take long to get a low-power TV station going.

The low-power stations that are now operating are hiring up to 25 people each, and spending between $50,000 and half a million dollars in equipment and startup costs. It is hard to think of a faster way to pump millions of private dollars into the economy than by putting some constuction permits in the hands of low-power TV entrepreneurs.

Let me thank you again, Mr. Chairman, for the opportunity to discuss the status of the low-power television industry with you today.

[The statement follows:]

STATEMENT OF RICHARD G. HUTCHESON III, PRESIDENT, AMERICAN LOW POWER TELEVISION ASSOCIATION

Mr. Chairman: I appreciate very much the opportunity to testify before the Members of this Subcommittee in behalf of the low power television industry.

There would not be 35 low power TV stations broadcasting in this country today were it not for the strong support for LPTV from the Members of the Subcommittee and from Congress in general. We are very grateful for your support.

In my remarks today, I would like, first, to review the status of efforts by the Federal Communications Commission to process the backlog of LPTV applications. Second, I wish to address the relationship between low power television and cable television.

In preparing my statement, I have consulted with officials of the National Translator Association, of which I am a member, of the National Institute for Low Power Television, on whose Board of Advisors I serve, and with fellow members of the American Low Power Television Association, of which I am President. These LPTV associations all share a common interest in expediting the granting of LPTV licenses.

Let me first assess the FCC's progress in processing the more than 7,000 low power TV applications on file at the Commission. On the plus side, there are the legislative accomplishments of last year. The FCC told the Congress that in order to handle the huge public demand for low power TV licenses, it needed additional funds and personnel, the legal authority to substitute random selection of licensees for competitive hearings, and a mini-computer to facilitate the technical processing of applications. Congress responded on every point, even passing a lottery law twice after the FCC complained that the original statute was unworkable.

The FCC is working to complete regulations governing lotteries by March. The computer has been purchased, and work on software is underway. A Low Power Television Branch, staffed by talented professionals, has been created at the Commission. Two months ago, the Chairman of the FCC indicated that 400-500 applications would be processed per month by May of this year.

That is the plus side. Unfortunately, there is a growing concern among LPTV applicants that the Commission will not be able to deliver on its promises and show actual results. Instead of 400-500 applications processed per month, we now hear 200-300. Instead of May, June or later. And we hear that the word "process" may not necessarily mean "process to conclusion," but simply movement from one stage of the paper shuffle to another.

Even more discouraging is the fact that in the past 9 months, only 84 applications have been moved to the first stage of processing, by being placed on a public notice called a "cut-off list."

In short, we see a steady backpedaling by the FCC from the claims and expectations which were raised last year when Congress gave the Commission what it then said would be sufficient to greatly increase the number of LPTV grants. The sad fact is that (outside of Alaska) you can count on one hand the number of construction permits for LPTV stations which have been issued by the Commission since last July.

Finally, there is another problem with which those of us in LPTV are becoming increasingly concerned. The Chairman of the FCC has pointed repeatedly to LPTV as an example of what the Commission has done to increase competition in the communications marketplace, and as an opportunity for new entrants, including minorities, into broadcasting. However, at the present time, the only new LPTV applications which may be filed are for mostly tiny communities, located more than 55 miles beyond the 212 largest television markets (known as "Tier One"). Even for these remote areas, interest in LPTV is so great that new applications continue to pour into the Commission. Yet with every new Tier One application, the time when the Commission may start issuing licenses for larger markets is postponed.

The spectre before us is that the Commission may fritter away the next several years issuing a trickle of permits for sparsely populated areas, during which time existing broadcasters are protected from increased broadcast competition in areas where most people live. Furthermore, as a consequence, LPTV may be denied the audience base which it, like any TV service, needs in order to be able to support affordable programming. If the FCC is permitted to proceed along this course indefinitely, the view of those who see LPTV as nothing more than a fringe broadcasting service may well become a self-fulfilling prophesy.

I call on the Commission to take whatever steps are necessary to achieve some results this year in LPTV. Results should be defined either as construction permits issued, or applications denied, not this slippery word "processed." This Committee should ask the Commission to state clearly what it will accomplish in 1983, in the way of grants issued. If the best the Commission can do this year is to grant 25 applications, then Congress should know that now. If the FCC is retreating from the projections which were made last year when Congress acted so responsively on the lottery, the mini-computer and the FCC budget, Congress should ask why. What is required is some accountability.

I know that some people view the thousands of LPTV applications as a pain in the neck. But the fact is that dealing with LPTV is not beyond the ken of mortal man, nor even beyond the capacity of a Federal agency in a time of budget restraint. No one can persuade me that LPTV is more complicated than, for example, DBS or cellular radio. All that is required is a willingness to take the steps necessary to achieve results.

Low power TV applicants are simply fed up with the long daisy chain of promises we have been getting. No sooner is one deadline reached, then another glitch develops. If we sit placidly by, waiting for June, when supposedly the computer will be operational, half of 1983 will be gone, and all we will have reached is the Commission's latest excuse for failing to begin issuing grants.

There are some things which can be done.

I recommend that the Commission set as a goal completing action on Tier One in 1983. That is, by the end of this year, the Commission should have dealt with all applications for those very small areas for which applications are now being accepted. By 1984, the Commission should move on to the next largest areas, known as "Tier Two."

There is nothing drastic about this. It simply calls for holding the FCC to some of the projections which were made last year at the time Congress acted on the computer, the lottery and the FCC budget.

In order to accomplish this exceedingly modest proposition, the FCC will need to take the following steps in the near future:

(1) As of a given date, cease processing new applications for Tier One areas until action is completed on existing applications. The Commission should begin accepting and processing new Tier Two applications in early 1984.

(2) The Commission must greatly accelerate placing existing Tier One applications on cut-off lists. This should be coupled with measures to protect applications placed on cut-off from nuisance filers—for example, by limiting the number of such applications, which may be filed by a single entity, and by requiring such applicants to look first for alternative open channels.

Taking these actions would give the Commission a finite universe of Tier One applications, and put the Commission in a position to begin using lotteries to allocate Tier One licenses. The FCC has been reluctant to issue large cut-off lists for fear that a new avalanche of applications would result. However, the FCC must place applications on cut-off at some point. It might as well bite the bullet and get it over with so that processing may proceed. If one thing is certain, it is that dribbling out cut-off lists in small numbers will generate proportionally far more mutually exclusive filings than will larger cut-off lists.

These steps are one way that results—measured in construction permits issued this year—may be achieved. Most applications would accept any reasonable proposals to accomplish the same purpose. But we cannot accept a course of events which will bring us to the end of 1983 without any appreciable increase in the number of LPTV station grants.

The Members of this Subcommittee know better than anyone the value to the American economy of the telecommunications industry. But you may not realize just how quickly the grant of a construction permit for a LPTV station may be translated into jobs and dollars in the economy. A few weeks ago, I watched a vidotape recording of the construction of Channel 43, a LPTV station serving Mountain Home, Arkansas. They started work on the station in October, and broadcast their first local evening news in January. It doesn't take long to get a LPTV station on the air.

The LPTV stations on the air now are employing up to 25 persons each, and are spending between $50,000 and $500,000 in equipment purchases and start-up costs. It is hard to think of any industry which can create more jobs in less time—and all with private dollars. Hundreds of LPTV entrepreneurs are ready to go. We are willing to accept any reasonable solutions which will shake free some go-aheads from Washington.

Let me now address the relationship between LPTV and cable TV. I believe that in many ways, LPTV and cable are natural allies. They are in different, but often complementary businesses. The cable operator is in the business of stringing wire, of offering good reception and a variety of imported TV programming for a fee. With few exceptions, the cable operator is not in the business producing local programming or selling local advertisements. Even cable systems which promise local access channels in order to win franchises do not have their hearts in local programming; to confirm that, it is only necessary to watch a local access channel for a few hours.

The relationship between cable and LPTV could be highly symbiotic. The cable operator could offer improved and extended coverage for the LPTV signal, while the LPTV station could assume the responsibility for local programming, and even sell ads for cable programs in addition to the LPTV channel. However, LPTV stations do need access to homes with cable in communities served by both LPTV and cable.

Due to the fact that LPTV stations did not exist at the time the Copyright Act of 1976 was passed, and due to the increased royalties which cable systems will have to pay under the most recent decision of the Copyright Royalty Tribunal, it may be very difficult for LPTV stations to gain access to local cable systems.

Under the 1976 Act, there are three types of signals transmitted on cable systems: (1) local stations or "must carry"; (2) distant network stations; and (3) distant nonnetwork stations. LPTV stations are not "must carry" stations under FCC rules, and are not classified at all under the Copyright Act. Because LPTV stations are not defined as local stations under the Act, cable systems will classify them as distant signals, for which a royalty fee will be incurred. Because of the cost involved in carrying distant signals under the recent CRT decision, cable systems may not carry the LPTV stations, despite their potentially desirable local programming.

This unintended effect of the 1976 Act should be corrected, by classifying LPTV signals as local stations. It is significant to note that 100 watt or higher power translator systems are classified as local signals under the 1976 Act. It makes no sense to exclude from cable systems local low power stations which are, in many cases, the only source of locally originated TV programming.

Of all the new TV technologies, low power television best embodies the sort of local service which is fundamental to the philosophy embodied in the Communications Act. Let met conclude by reporting some good news about LPTV. Many of the 35-odd LPTV stations now broadcasting are providing precisely the sort of coverage of local news, weather, sports and/or public events which had been predicted—and these stations are having their greatest success in selling local advertisements in precisely these areas.

One station manager is telling his viewers that "LPTV" means "local programming" TV rather than "low power" TV. His viewers could care less how far the signal reaches; all they know is that for the first time, they have a TV station in their own town which is serving their needs.

We now know we have a service which is desirable to many TV viewers. Hundreds of entrepreneurs are willing to invest private dollars to build these stations all over the country. The job of protecting existing stations while processing applications for thousands of new, low power stations is very difficult. But it is surely beyond the capacity of intelligent people. If the Commission makes its way through 1983 without issuing a substantial number of construction permits for new LPTV stations, it will be hard to escape the conclusion that the FCC is more interested in protecting existing interests than in opening up the communications marketplace to new competition.

The Members of this Committee are in a position to see that this does not happen. Last year Congress gave the FCC adequate means to get some results in terms of LPTV licenses granted this year. We respectfully request that you refuse to let the Commission substitute excuses for performance, and hold the FCC accountable for showing some results.

Senator GOLDWATER. Thank you very much, Mr. Hutcheson.

Now we have Mr. William Wewer.

STATEMENT OF WILLIAM WEWER, GENERAL COUNSEL, SUBSCRIPTION TELEVISION ASSOCIATION

Mr. WEWER. Thank you, Mr. Chairman.

I am general counsel to the Subscription Television Association (STVA), which is a trade association of over-the-air pay television operators, including STV, MDS, and DBS. I will limit my comments this morning to the access provisions of the proposed section 606 of the bill.

Today there are more than 100 over-the-air pay television stations in operation, which would include my colleague here with the low-power stations, which are in operation in most major cities across the country, and in a number of smaller cities. These over-the-air stations compete with cable for subscribers to the premium programing offerings—films, sports, and cultural events. We do not compete with cable for the basic programing.

To the viewer there is no real technological difference between over-the-air stations and cable stations. Of course, we know that one of them is transmitted over the air and received by antenna, piped down into the house through a wire. The other one—cable—is done by wire-line transmission under streets and under other places, and piped into the house through another wire.

So in fact the competition between the two types of services for subscribers is almost purely on marketplace forces—the programing mix of premium programing, the cost, and similar matters. In some areas, such as Los Angeles, over-the-air subscription television has been the marketplace winner. In other areas, cable is dominant.

Fair competition would leave the subscription decision to viewers based on pure marketplace forces and factors, including of course the option to subscribe both to cable for the basic programing and to over the air for premium programing.

Unfortunately in many areas cable operators weight the scales. When they install cable in a home, they clip off the antenna connection and refuse to allow an STV operator or other over-the-air operator to plug a new antenna into that television set. Of course, because most of the cable operators understandably will not lease channels to over-the-air purveyors of premium programing, by clipping the antenna connection the cable operators effectively cut off competition from over-the-air operators for those particular subscribers. They force the subscriber to take nothing but cable and make it effectively impossible for the subscriber to elect also to receive over-the-air premium programing.

Mr. Chairman there is a very simple technological solution to this problem, and that is simply installing a switch, an "A/B" toggle switch, which allows the viewer to alternate between his cable and his antenna. These toggle switches cost less than $4. They do not interfere with cable reception. They simply give you the choice of receiving via antenna or receiving via cable.

In the last Congress, S. 2172 would have required a 10 percent channel set aside for what was defined as leased-channel programs, which of course would include over-the-air pay television operators. This year's bill does not so provide, it only provides for government and public access channels, and this exacerbates an already unfair situation.

STVA does not propose mandatory access. We don't propose mandatory set asides, or any other amendment which would adversely impact cable operations. STVA only requests that the proposed section 606 dealing with access be expanded to require all cable operators to install, at the time they install cable to a viewer's set, a switch that will allow that viewer to switch between antennas and cable. Our proposal would give the viewer the choice of subscribing to cable's basic service as well as an over-the-air premium program service. It additionally would reflect the fundamental fairness of allowing over-the-air television operators to compete on equal terms with cable.

Mr. Chairman, I appreciate your attention to these comments.

Senator GOLDWATER. Thank you very much, and particularly for your switch suggestion. I am working on one myself.

Next we will have Mr. Jerry Holley.

STATEMENT OF JERRY HOLLEY, VICE PRESIDENT, BROADCASTING, STAUFFER COMMUNICATIONS, INC., AND VICE CHAIRMAN, TELEVISION BOARD, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. HOLLEY. Thank you, Mr. Chairman.

I have submitted a formal statement for the record.

Senator GOLDWATER. It will be printed.

Mr. HOLLEY. Let me say that I am vice president of broadcasting for Stauffer Communications. Our headquarters are in Topeka, Kans. We operate a small market television station in Topeka, and an additional small market television station in Santa Maria, Calif. We are 50-percent owners of the Amarillo, Tex., cable system.

I appreciate the opportunity to express the views of the National Association of Broadcasters before your hearings on new technologies.

Television broadcasters approach the future with a profound sense of the opportunities available to those who will use them. Some of us are branching out into new industries to offer pay services to the public. Many more of us are using new technological developments to improve the service we provide over free television. We welcome the new age and are enthusiastic participants in its evolution.

At the same time, we are determined to preserve what is good about our current system of broadcasting. That system is unique in all the world in its commitment to local needs and interests. Local stations are licensed to serve their communities, and they are held accountable for that service. If we are to continue to provide it, we must be guaranteed access to our local cable systems.

It is that aspect of communications policy which is the focus of my testimony. It is particular appropriate to consider that issue as your committee prepares to take a comprehensive look at S. 66 by which the cable industry conducts business.

The picture remains dangerously incomplete without a guarantee of local signal coverage. It is my own personal view, and in visiting with free television broadcasters around the Nation, that this is the single most important problem facing free television.

We know that under the "must carry" rules there is a rule at the present time that cable operators must carry stations in their local communities. However, there is a petition at the FCC to eliminate the "must carry" rules. We think that something so critical to the character of our communications system shouldn't be left to the changing whims of FCC regulation, deregulation, and reregulation. Congress should reaffirm the longstanding commitment to localism by codifying the rule.

"Must carry" rules carry a diversity of local programing, and I think it is very important to provide the local coverage and, of course, viewers rely on it. In my own State, of course, there are areas where cable cannot go because it would be prohibitive in cost, and there are also people who simply can't afford to hook up to cable. Yet we feel that these same people need to know whether their high school basketball team won the game or if there is a tornado coming in, or something like that.

We think that "must carry" also prevents a cable monopoly. Cable technology gives operators that natural monopoly. I wish I could agree with my colleague here at the table, but I am not sure the A/B switch will work. In my experience it has not. In most cases, cable operators will use a promotion to trade in your antenna when we hook into cable. Even most people will take the antenna off the roof of the house when they are hooked to cable. I am not sure that problem can be solved that way.

I am afraid, too, that cable operators might be expected to drop local signals if given discretion to do so. The worse case situation where a cable operator might decide that one or two local stations are enough, and substitutes some more pay services in the place of local operations.

A cable operator may develop his own news programing. He might want to cut off the competition by dropping off local channels. Another situation would be that operators would be particularly likely to drop stations in overlapping markets.

"Must carry" also prevents a decrease in viewer options for everyone. Operators of cable systems should not be able to deprive their subscribers of the service they had before they were wired. Viewing options of nonsubscribers will also be affected if stations are forced to go dark or cut back programing because they can't reach a large share of the market.

It would be particularly damaging to UHF and independent stations, many of which are just getting started. It would be damaging to specialty stations—minority, Spanish language, religious, education. It could keep new stations from going on the air.

"Must carry" is fundamentally fair, we believe. Cable is a strong industry now and doesn't need special treatment. The channel capacity is growing and "must carry" requirements are not a burden. In specific areas where there are problems, we can handle that with special waivers.

In summary, guaranteed carriage of local signals doesn't harm the cable industry and prevents harm to the viewing public. Local broadcast stations, unlike cable, have a statutory mandate to serve the interests and needs of their communities. Carrying out that mandate they have given a level of service that is quite simply the best in the world. Most importantly, they have provided and continue to expand the local news and public affairs services essential to the quality of our lives and government.

The cable industry should not be put in a position where it can unfairly threaten the ability of broadcasters to perform their unique function. It should not be able to prevent local stations from reaching viewers, thereby restricting the programing available to its own subscribers, and ultimately to the entire public.

To assure that there will continue to be a diverse supply of local programing for both cable subscribers and noncable subscribers alike, the "must carry" requirements must be retained and codified.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JERRY HOLLEY, VICE CHAIRMAN, TELEVISION BOARD, NATIONAL ASSOCIATION OF BROADCASTERS

Thank you for this opportunity to express the views of the National Association of Broadcsters (NAB)[1] before your hearings on new technologies. Television broadcasters approach the future with a profound sense of the opportunities available to those who will use them. Some of us are branching out into new industries to offer pay services to the public. Many more of us are using new technological developments to improve the service we provide over free television. We welcome the new age and are enthusiastic participants in its evolution.

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[1] The National Association of Broadcasters is the trade association of the broadcast industry. It represents over 5,000 of the nation's commercial stations, including 693 TV stations and the three television networks.

At the same time, we are determined to preserve what is good about our current system of broadcasting. That system is unique in all the world in its commitment to local need and interests. Local stations are licensed to serve their communities, and they are held accountable for that service. If we are to continue to provide it, however, we must be guaranteed access to our local cable systems.

It is that aspect of communications policy which is the focus of my testimony. It is particularly appropriate to consider that issue as your Committee prepares to take a comprehensive look (in S. 66) at the rules by which the cable industry conducts its business. The picture remains dangerously incomplete without a guarantee of local signal coverage.

THE FCC'S "MUST CARRY" RULES

The FCC's "must carry" rules protect the public against loss of free, local television service. They do this by requiring cable television systems to include local television broadcast stations among the multiple channels of programing which they offer their subscribers. The rationale for this requirement is simply that if a cable system were able to "wire" a community and then exclude its local free television stations, cable subscribers could be denied the television service they received free before cable arrived. The local stations themselves would be at a serious competitive disadvantage if they were denied access to substantial parts of their own markets. Absent "must carry" rules, local television stations could be dealt a life-threatening blow with the arrival of cable—which, unlike television broadcasting—has no obligation to ascertain or address local community issues. The Commission recognized this possibility when it adopted the "must carry" rules in 1965 when the cable industry was in early infancy. At that time, the Commission said:

"(B)ecause it is patently destructive of the goals we seek in allocating television channels to different areas and communities, we believe that a CATV system's failure to carry the signal of the local station is *inherently contrary to the public interest.*" (Emphasis added.)[2]

The "must carry" rules have been in force for the last eighteen years as cable has grown from struggling infant to mature tycoon. If failure to carry the signals of local stations was inherently contrary to the public interest when cable was just getting started, logic suggests that the same is true—but with far greater urgency—now that cable has penetrated 30–35 percent of all American homes. Yet a petition to delete the "must carry" rules has been pending at the FCC since 1980. Although the Commission has not acted upon it, the threat that the rules will be abolished remains. (Congress relied upon maintenance of FCC cable television rules when it enacted the Copyright Revision Act of 1976, but that did not stop a previous Commission from deleting its distant signal and syndicated exclusivity rules in 1980.) NAB urges the Congress to codify "must carry" principles to shelter the public interest in vigorous, free local television service from the changing winds of FCC regulation, deregulation and re-regulation.

"MUST CARRY" PRESERVES A DIVERSITY OF LOCAL PROGRAMING

Codification of "must carry" is a natural extension of the sound public policy embodied in Section 307(b) of the Communications Act. This section of the law requires the Federal Communications Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide *a fair, efficient and equitable distribution of radio service*" throughout the nation. (Emphasis added.) This statutory command set a national priority which has been implemented primarily by local stations, which have a unique function in our system of disseminating news, information and entertainment programing.

That unique function is summed up in the word "localism," which also describes a crucial difference between the respective roles of television and cable. Television stations are rquired to determine and direct programing toward issues in their local communities. They are also expected to present significant amounts of varying types of programing, such as news and public affairs. These requirements, imposed by the FCC upon its television broadcast licensees, do not apply to cable operators.

Repeatedly since the enactment of Section 307(b) in 1934, Congress has reemphasized the continuing importance of localism to the public and to fulfillment of the national policy which Section 307(b) embodies. It worked closely with the FCC in the early 1950's, for example, to develop allocations policies which protected localism. During the early 1960's, Congress acted to enhance local television service by passing legislation requiring all-channel receivers on American television sets, thereby placing UHF television on a par with VHF. Such Congressional policy decisions have strengthened local television service, and the public benefits are manifest.

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[2] First Report and Order in Dockets No. 14895 and 15233, 38 FCC 683, 705 (1965).

In 1979 American television stations provided a total of 235,000 hours of local news coverage. It has been reported that 71 percent of the viewing public watches the early evening local television news at least twice a week, and 69 percent watches the late evening news at least twice weekly. (Viewers actually spend about 2½ times as many hours watching locally produced news programs as they do watching the national evening news shows.) In addition, local talk and interview programs play a vital public role by disseminating information and a "multiplicity of voices" concerning local issues of public importance. These programs also bring public and elected officials into regular contact with their constituencies. In other words, local television programing helps make our democratic system work.

Local television also plays a critical role in delivering information to the public during crises. Emergency weather information provided by local television stations, for example, is not a luxury to citizens in many parts of the country; it is a life-and-death necessity.

Satellites can beam programs over a large chunk of the Earth's surface, and one day they may send them directly to a receiving dish on your roof. But a satellite 23,000 miles away can't probe and the goings-on at City Hall. And it's unlikely to carry a Congresswoman's message to her constituents. A videodisc player can play a movie anytime you want, but it can't contribute to a discussion of the strike at the plant out on the interstate bypass. A special cable service may bring you an exciting football game, but typically it's bringing it in from somewhere else.

While cable may eventually develop the potential for limited local service, that day is (in the vast majority of communities) far in the future. And cable will never be able to adequately replace the diverse information system represented by commercial and noncommercial broadcast stations. Also, it will not be available to all. Unlike television programing, cable service comes at a subscription price which not everyone can afford.

Congress should act once again to reaffirm its commitment to protection of local service. Localism had been the underpinning of our telecommunications policy, and it has served the public well. Its future should be assured by codification of "must carry" requirements.

MUST CARRY PREVENTS A CABLE MONOPOLY

If Congress leaves the door open for elimination of "must carry" rules, the result could be legislative sanction of a cable monopoly. Absent those rules, cable operators could have total control over the programming available to subscribers in their local communities.

The technology of cable television gives cable operators a natural monopoly. Once a subscriber's home is wired for cable, what he or she views is left to the discretion of the cable operator. As a practical matter, if the cable system did not carry local television stations, citizens could not receive them at all. Off-air reception usually requires a roof-top antenna, which in many instances is now removed routinely by cable installers when homes are "wired."

In homes where the antennas have not been removed, experiments involving the "AV switch" have proved unsuccessful. In theory, the switch would permit the subscriber to override the cable to receive local television service. The original signal carriage rules specified that if a local television signal was not carried by cable, "the system shall offer and maintain, for each subscriber, an adequate switching device to allow the subscriber to choose between cable and non-cable reception . . ." (47 C.F.R. Section 74.1003(e)(1971). But in 1972, the Commission amended its rules to impose an absolute obligation upon cable systems to carry local stations. The effectiveness of the switching devices from a technical standpoint had not been established and, from a policy viewpoint, the Commission recognized that is was inherently unfair for a cable operator to have the monopoly power to block a local broadcast station from access to its own market. Apart from anti-competitive considerations, removal of the switching device option also furthered the First Amendment interest in the greatest possible number of voices available to the viewing public.

In 1974, the Cabinet Committee on Cable Communications in its Report to the President (at Chapter II, page 2), noted that—"the private power of the cable system operator is potentially great, because of the local monopoly characteristics of cable.

Unless restrained in some manner, the system operator could control all of the channels on his cable system, which could constitute the bulk of the channels of electronic communications in a particular locale."

As cable penetration has increased dramatically since 1974, this view is of even greater significance now.

It is sometimes asserted that cable operators will carry local broadcast signals even if they're not required to, that it is only "good business" for them to do so. Consider, however, a scenario in which the local cable operator, over time, acquires the capacity to program his own local news. It is not inconceivable that in the absence of "must carry" rules, he could confuse the public interest with his own profit motivations. He could reproduce the national entertainment and news programming normally available over local affiliates and independents by bringing in a variety of distant signals. He could then drop the local signals in his area and eliminate his competition for local programming. He might not choose to keep every local signal off his channels—perhaps just those with the best operation who pose the greatest challenge to his own efforts. Or perhaps the cable operator arbitrarily decides that one or two local programming stations is "enough"—and that he is going to drop the others in favor of pay services that he feels will give him a higher financial return.

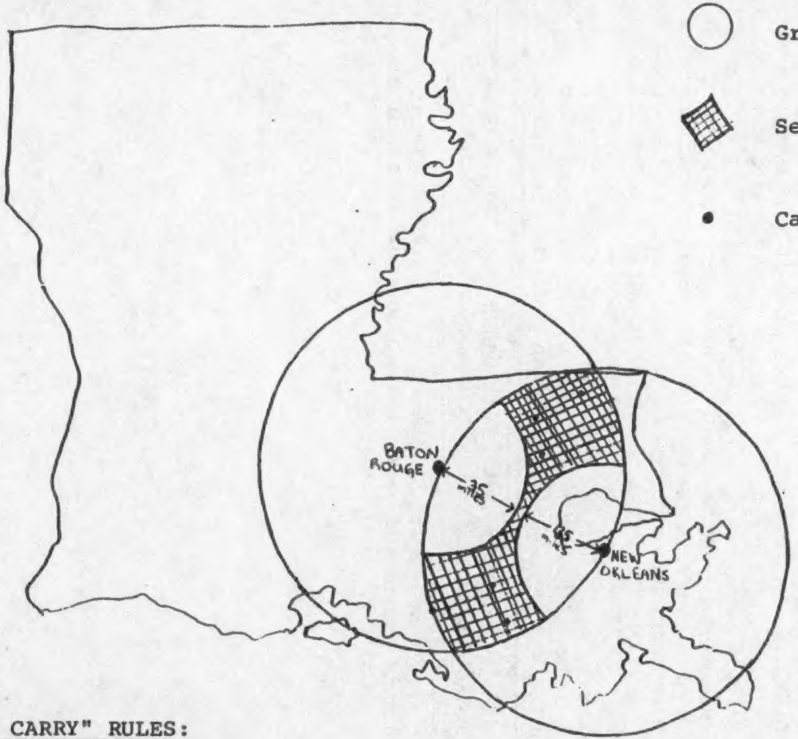
Large numbers of people living in "secondary market" areas would be particularly vulnerable to loss of local television service. In these areas, television signals from two markets overlap, and stations of both markets are considered to be local and required to be carried by area cable systems. Absent "must carry" requirements, viewers in the area of overlap of the signals from the two markets (i.e., the "secondary market") could be expected to lose much of the local television service upon which they now rely.

Baton Rouge and New Orleans, Louisiana provide a graphic case in point. Signals from the two cities overlap, and there are five counties between them which constitute a "secondary market" (See chart A).

LOUISIANA

KEY

- ○ Grade B of TV Signal
- ▦ Secondary Market
- ● Cable System



WITHOUT "MUST CARRY" RULES:

Number of Persons Affected (Based on 31,124 Subscriber Households)	90,571
% of State Cable Population	10.6%

CHART A

As the chart illustrates, in Louisiana there are seven cable systems in five counties that are located where the television signals of Baton Rouge and New Orleans overlap. The hatched area represents the secondary market just described. There are 31,124 households (with approximately 90,500 persons or 10.6 percent of Louisiana's current cable population) subscribing to these seven cable systems, and all of them could be affected by elimination of "must carry" rules.

Cable operators in the five counties now are required to carry the stations of both Baton Rouge and New Orleans. In the absence of "must carry" rules, it is likely that area cable operators would choose to no longer carry the signals of both markets. An operator might provide for a full complement of network programming by carrying three local affiliates and then drop the remaining local stations in order to free channel space for more profitable uses (i.e., pay services). Or he might decide to carry all the local signals of Baton Rouge and totally drop the New Orleans signals—or vice versa. Cable subscribers would suffer not only a material decrease in the amount and diversity of local programming they recieve, but they would also lose the right to determine which stations in those two markets offer the programming best suited to their needs.

For instance, a cable subscriber living closer to Baton Rouge than to New Orleans may feel that the programming broadcast by a Baton Rouge station is more relevant to him than that offered by New Orleans stations. A subscriber living equal distance from the two cities but who works in New Orleans may prefer to watch a New Orleans station. If the "must carry" rules were eliminated, however, the cable operator would have complete control of those viewing options.

Chart B illustrates a state which experiences more extensive overlap between markets. In Florida, the Grade B contours of four markets intersect. In the absence of "must carry" obligations, more than 120,000 persons (or 5.4 percent of the state's cable population) could lose access to what they consider local programming.

CHART B

Chart

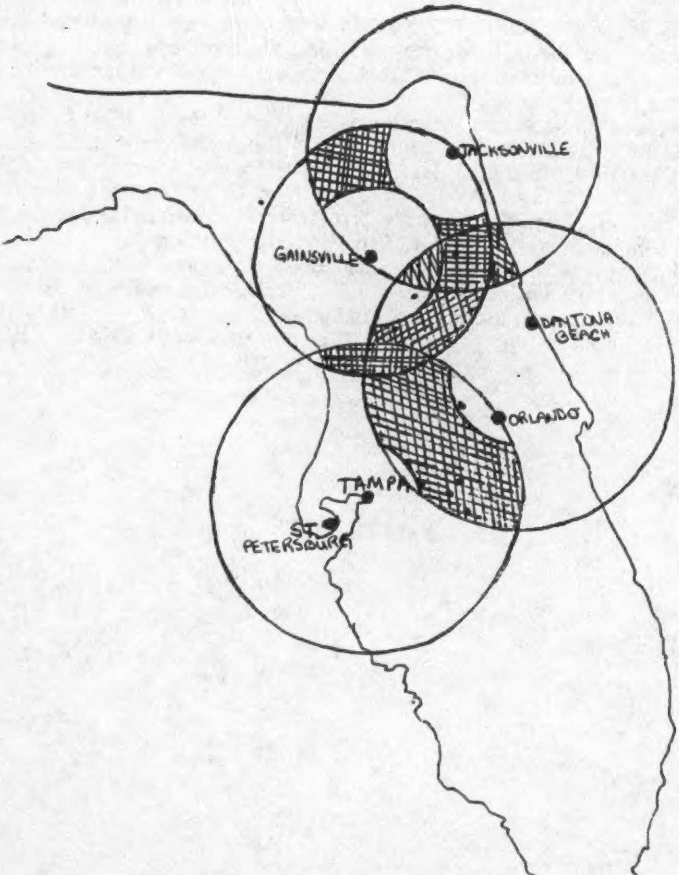
FLORIDA

KEY

○ Grade B of TV Signal

▨ Secondary Market

• Cable System



WITHOUT "MUST CARRY" RULES:

Number of Persons Affected (Based on 47,065 Subscriber Households)	120,016
% of State Cable Population	5.4%

In the top 100 television markets, there are 65 of these secondary or overlapping markets. Without "must carry" requirements, the subcribers in those areas stand to lose a substantial portion of the local programming they have been accustomed to receiving.

"MUST CARRY" PREVENTS A DECREASE IN VIEWER OPTIONS FOR EVERYONE

Cable television should not be able to deprive people of service they already have; rather, it should implement its technical ability to provide additional programming services. Homes subscribing to cable should not receive less local television service than their neighbors who do not subscribe. If "must carry" is not codified, the decrease in service could also spread to non-cable homes. Unable to be received by substantial portions of the communities they are licensed to serve and upon which they depend for advertising revenues, many local television stations could be forced to go dark. Many others would be forced to cut back on their locally oriented programming, which is expensive to produce. These results could be expected to apply not only to commercial television broadcasters, but also (and perhaps especially) to public stations, many of which already are in precarious financial condition. There might also be a disproportionate impact upon Spanish language, religious and other specialty stations which address the needs and interests of minority segments of the population.

The elimination of "must carry" rules would be particularly devastating to UHF and independent stations. Many of these stations are now in the early stages of development, without the advantage of "ready-made" network programming. If local carriage were not required, cable operators would have the power to make discriminatory and arbitrary choices among local stations. Likely first victims would be new stations—often UHF—which are struggling to achieve viability and to provide programming service different from that already available in the market. "Must carry" rules are critical if UHF television is to become a fully competitive service—as Congress intended it to be.

In addition to undermining new stations already in existence, removal of signal carriage requirements would preclude many new stations from emerging at all. In markets wired by cable, whether a new station goes on the air will no longer depend upon whether the market can support another station, but rather upon whether a sufficient number of advertisers is willing to buy time on a station available only to the portion of the market consisting of non-cable homes. Those homes would include people who could not afford to subscribe to cable, and who would therefore be less attractive to advertisers. The result would be to stunt the future growth of new stations, and thereby, the diversity of voices and programming available to the public.

CODIFICATION OF "MUST CARRY" IS FUNDAMENTALLY FAIR

Mandatory carriage of local signals is necessary to preserve balance and fundamental fairness in the media marketplace. Cable is a strong, dynamic growth industry which is in less need than ever of special treatment or one-sided benefits. Cable penetration has increased to 30–35 percent and is projected to rise to 50–60 percent by the end of the decade. Advancing cable technology, moreover, makes protection of local television broadcasting more essential than ever before. Cable systems in California, for example, are proposing a system of inter-connects which would link separate cable systems into a single economic unit capable of wielding massive new power in the marketplace. If that power were further augmented by the ability to exclude local television stations from carriage, the result would be a truly dangerous monopoly in a position to do serious damage to the public interest.

It is particularly appropriate to consider codification of "must carry" rules in the context of S. 66—which provides yet new benefits to the cable television industry. Section 606 provides a limit on the percentage of channels which local authorities can require be set aside for public use; in some circumstances, there would be no access channels at all if S. 66 becomes law. Section 607 precludes regulation of most rates and services, and Section 608 provides for a ceiling on franchise fees. Section 609 establishes, in effect, a renewal expectancy for cable operators. All of these new benefits to cable are proposed against the background of cable's exclusive local franchises and relative freedom from federal regulations—in marked contrast to the broadcast industry. If cable is to have the additional advantages contained in S. 66, it seems only fair that there should at the same time be codification of the mandatory carriage of local television stations, a requirement that does not unduly burden cable operators, but does assure major public benefits.

That mandatory carriage requirements burden cable minimally, if at all, is clear from the upward trend in the number of channels cable systems have. As of 1982, 60 percent of "wired" households had cable service providing more than 12 channels. Many cable systems which formerly had 12 channels or less have upgraded their systems to 36 or 54 channel capacity, and the trend is accelerating. New cable systems have channel capacities of 54 or more, and in major markets capacity often exceeds 100 channels. In fact, many cable systems will have, for the foreseeable future, more channels than they can possibly program. In those cases where channel capacity is still limited and there is a real problem of "saturation," the FCC waiver procedure now in effect can continue to operate.[3]

In summary, guaranteed carriage of local signals doesn't harm the cable industry and prevents harm to the viewing public. Local broadcast stations have a statutory mandate to serve the interests and needs of their communities. In carrying out that mandate, they have created a level of service that is, quite simply, the best in the world. Most important, they have provided (and continually expand) a local news and public affairs service that is central to the quality of our lives and government. The cable industry should not be put in a position where it can unfairly threaten the ability of broadcasters to perform their unique function. It should not be able to prevent local stations from reaching viewers—thereby restricting the programming available to its own subscribers and ultimately, to the entire public. To assure that there will continue to be a diverse supply of local programming for both cable subscribers and non-subscribers alike, "must carry" requirements should be retained and codified.

Senator GOLDWATER. Thank you very much, Mr. Holley.

Mr. Schildhause, for your information, I know you know it, and Mr. Hutcheson, the FCC has over 8,000 applications for low power TV. We have given them the authorization for a computer. I don't think they are going to get the computer until this summer. I don't know why they can't borrow one.

Mr. HUTCHESON. Mr. Chairman, they do have the computer now, and they are working on the software.

Senator GOLDWATER. I don't think they have learned how to use it.

Instead of processing 300 a month, maybe by this summer they will have processed 30 a month. I want you to know that this subcommittee has been gigging the chairman quite regularly on this because, as you can imagine, most of us come from smaller States out in the West where we don't enjoy all of the facilities that the easterner enjoys as far as television is concerned.

Mr. Schildhause, what role do you see for your company in expanding the availability of new services to the public?

Mr. SCHILDHAUSE. Do you mean with the Commission out of the way, or with the Commission in the way?

Senator GOLDWATER. Just any way you are going.

Mr. SCHILDHAUSE. The Commission has for years, Senator, been calling for the formation of new networks, new national networks on the theory that diversity cannot be achieved by planting a new stations here and there. What it takes is another network.

Every 10 years or so the Commission appoints a network study group. They draft from the colleges or the universities. They bring some people in and they are given instructions to study the problem. Inevitably they come up with the recommendation that the

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[3] Under 76.97 of the FCC's rules and regulations, cable operators can petition the Commission for waiver of the "must carry" provisions of the Cable Report and Order of 1972. Each petition is decided in light of the public interest, convenience, and necessity. Factors typically considered by the Commission in this determination are the number of channels available on the cable system; the number of stations in use on that system; the number of channels used for "must carry" signals; the number of mid-band channels available that are not currently used for pay service packages; the cable operator's financial situation; and the cable operator's plans for future expansion of its system.

Commission needs new networks. They always annotate that by saying, "However, the Commission, although it professes to want new networks, hardly ever does anything about facilitating the formation of those networks."

What we did, we discovered a lot of translator stations in an old service lying around unused. Now with the new facilities for interconnecting via satellite, it occurred that this would make for an inexpensive new television network that would deal with things that the regular networks don't deal with, that would not need big audience shares to be viable. It was assembled on that basis.

We started applying for these stations in the established translator service. The translator service being a service that was at least 30 years old. We even ran it by the Commission. We were told repeatedly and we were encouraged to file. We were told that our applications would be nourished and routinely granted.

Lo and behold, one day the Commission decided to launch this low power television service. We have no objection to low power television service. We think it is fine. I think that it is going to be another pay TV service, and not the kind of service that was envisioned for blacks, Hispanics, and other minorities, and the rural folks. I think that it is going to be a plain, old selling of movies and sports at night, but that is OK. We have no objection to that.

What the Commission did was, right after we had filed our applications and when all those applications of ours were fair game to be granted and quickly, they open up this proceeding asking: Should there be a low-power TV service? Then they said: Everybody file in anticipation of that. By golly, they came out of the woodwork, from all over the place.

Most of the applications I saw were copies of ours. They just photostated them and put different names on them. Postal clerks in Washington, D.C., appended their name to applications like that. This was going to be the key to getting rich.

All of those 8,000 applications, and there are going to be 15,000 more I am told, have been made competitive with ours. In effect, they have been told that they are going to get preference over ours. So I will have to say, in response to your question, Senator, that the way the Commission is operating these days, I think there is going to be awfully slow movement of low power if any. I don't think that we are going to get very fast action from them on our proposal for a fine, new national television network that we were ambitious enough to conceive back 3 or 4 years ago.

Senator GOLDWATER. Thank you.

Mr. Turner, I am to skip over you because the next question relates to the last answer, and I know that Mr. Hutcheson is interested in this same field.

My question to you, Mr. Hutcheson, what role do you see the low power television industry playing in providing competition in the market place for programing services?

Mr. HUTCHESON. I think it will play an extremely important role. The one thing that is unique and special about low power, which none of these other services have in the area of programing, is the local emphasis.

Most communities in the United States today do not have a local television station. They may have a small cable system, but that cable system simply imports channels originated elsewhere. So in most cases the low power station is really the only vehicle for local news, local high school sports, and the weather.

In fact, the low power TV stations that are on the air now are bringing in their highest advertising dollars on precisely that type of locally originated programing. So I believe that that is the unique and special and very important programing service.

Senator GOLDWATER. Could you give us some figures on that point?

Mr. HUTCHESON. Sir, they are placing spots highest for their local programs.

Senator GOLDWATER. I would just like to have the figures. If you will supply the figures, we will put them in the record.

Mr. HUTCHESON. I believe, for example, that the station in Bemidji, Minn. is charging its highest prices for spots on its local news. There is a station at Alamogordo, N. Mex., where the top rated program is a weekly variety show which they do. These are examples of locally originated programs for which low power TV stations are charging the most money for advertisements in terms of dollars per spot.

Senator GOLDWATER. Thank you.

All right, Mr. Turner, first before I ask you a question, I want to make a comment because several of you referred to the CRT decision and asked us to do something.

Many of us would like to, but it comes under title 17 of the United States Code, and something like this has to be heard by the Judiciary Committee. Even if we heard it, we wouldn't have the power under the Senate rules to report anything like that to the Senate floor.

So I would suggest that you get to work on the people on that committee who would be interested in making any changes that could be made. Again I have to think in a Western way, where we have many, many people who can't get television, except local; who can't get a lot of radio; but they are just as avid sports fans as those people who live in Washington, or St. Louis, or San Francisco. So I suggest that you get on that.

I would like to ask you, Mr. Turner, how has this CRT decision specifically affected your station WTBS? How many systems have dropped you because of it?

Mr. TURNER. As I am sure you are aware, Senator, the Senate postponed the CRT decision until March 15 from its initial date of January 1. So the full impact has not been felt as yet. But I think WTBS has been dropped in close to 200,000 homes and probably 40 cable systems or 50 systems so far, but it will be dropped a lot more a month from now on March 15.

The effect that it has, we have had to postpone several projects, programing projects, not only because our resources were not going to be channeled into this nonproductive fight to retain our rights here in Washington, but also because we don't know what the full impact is.

We were anticipating doing a series on the Presidents, an hour special on each President of the United States starting with George Washington. We have had to postpone that particular project indefinitely because of the uncertain economic impact that this is going to have on us. So our original programing plans are being affected right now.

Senator **Goldwater**. How could CRT have any impact on George Washington?

Mr. **Turner**. The program was going to cost $300,000 per hour to do, and we are not sure that we will be able to amortize the cost of it.

Senator **Goldwater**. Could you describe, Mr. Turner, how the programs of your station WTBS are transmitted to cable systems across the country, and about how many systems or people do you reach?

Mr. **Turner**. I can do that very simply. We are picked up in Atlanta by a common carrier, Southern Satellite, which transmit the signal to a satellite, and then it is picked up by cable systems across the country that pay the compulsory copyright fee. We are on 4,990-something systems at the current time, and according to Nielson we are available in 30 percent of the homes in the United States, or 1 out of 3.

Senator **Goldwater**. I was inquiring as to just how much the decision of the CRT changed your rates?

Mr. **Turner**. The change in the rates went—the average rate was approximately 6 cents per month per subscriber. One facet of the CRT increased that basic average 6 cents to approximately 10 or 11 cents, that is something that is fairly tolerable to the cable industry. The disastrous thing was the average rate to 35 cents for a cable system that is bringing in more than one or two distance stations as before the FCC deregulated cable approximately 3 years ago.

Senator **Goldwater**. Thank you.

Mr. Wewer, how will single channel alternatives to cable like subscription television be able to compete in the future?

Mr. **Wewer**. Mr. Chairman, it certainly is a marketplace problem for us. The single-channel over-the-air stations put on different programing mix from cable in that we generally put together what we call a stand-alone system. That is, we put together a unique mixture, a unique blend of movies and sports and cultural events, making buying decisions as we go. Whereas cable will tend to plug into an existing operation, such as HBO or Showtime, and put it straight across the air.

We make the effort, because we only have one channel, to try to reduce the number of repeat showing of movies, to increase the quality of the movies because we really do have to compete on what we show. It is not a matter that it is piped in anyway, and you can take it; we really would have to make the viewer come to a decision to select us over the cable.

In addition to program mix, the over-the-air industry has been exploring for some time in our short career the opportunity to do what we call tiering, that is, to provide several different channels also on a pay television basis. That tiering can be done either by piggybacking several UHF channels on top of each other, or by coordinating between STV, which would be on UHF and MDS, which is a much higher frequency, and of course low-power television and DBS.

Additionally, there has been some technological work done to see if tiering can be done on one channel, allowing us to send out two different types of broadcast on the same channel. I think that ultimately tiering will be a major factor in over-the-air television's ability to compete with the multichannel cable operations.

Senator GOLDWATER. Thank you very much.

Pretty much in that line, Mr. Holley, how can over-the-air broadcasting participate in a new age of telecommunications?

Mr. HOLLEY. Mr. Chairman, I think we probably already are, I think, in this country today. Of course, as cable began, using of course just the signals that were available from local television stations, stations 50 or 60 miles away. There are many broadcasters in cable television today. I think broadcasting is the foundation for a great deal of these new technologies, and I think broadcasters are the logical group to move into these new technologies. I think that that is already happening and I think that more will happen.

Senator GOLDWATER. The Chair wants to ask a question and make a comment that might indicate the prompting of the question.

You are always looking for things to better serve your people and our country. Last night, as is my want, I watched a network newscast and just for the hell of it I made a mark of everything bad they said about our country and the world. Eighty-three percent of the comments on that broadcast were about bad things in this world. So I am putting several people around the country to tabulating.

I think there are some good things about this country. We have more people working than at any time in our history. Our economy is going up faster than a lot of these people like to realize. We still have freedom. The world is in a lot better shape than it has been in years.

The networks are not licensed, except through the stations they own, which is four or five apiece. The question is, Do you think that it would be wise, in the interest of having a little more control over what the American people see, to license the networks? Not to write a bunch of regulations, but if they start or continue to produce programs that are not exactly true, we might have a hand in guiding those. Would there be anything wrong in that?

[No response.]

Senator GOLDWATER. I am getting tired of hearing that everything is wrong with my country. I have been around it a long time, and it is a pretty good place.

Mr. SCHILDHAUSE. There may not be a cure for that in the way our system works. I think that one has to ask himself whether he would offer similar suggestions for controlling newspapers which to a large extent do the same thing in many cities. I think that is the price we have to pay for keeping Government out of the press, because the alternative is even worse.

Senator GOLDWATER. I realize that, and it does involve first amendment possibilities. We have not made up our minds on it at all. But I can't understand why the American people have to be subjected—I am not going to use the word in my mind—day after day in the newspapers, the magazines, not so much radio or television. It is getting to be a pet peeve of mine.

Mr. **SCHILDHAUSE**. The answer may be, if I may suggest, sir, in creating as much diversity as we can, getting as many alternate voices as is possible. Cable certainly is one. MDS is another. DBS is another. Whatever the labels are, another voice increases your chances for getting another viewpoint.

Senator **GOLDWATER**. I think you have a good idea.

Mr. Holley.

Mr. **HOLLEY**. Mr. Chairman, we have a network affiliation, and they don't always check with me in Topeka before they do things, but I do want to pass along to you that the National Association of Broadcasters, beginning on Christmas day of last year, the entire membership is underway with a productivity campaign with announcements on radio and television to improve the productivity of American, a very positive approach to America. I would like to acquaint the Chair with that.

Senator **GOLDWATER**. Thank you.

Are there any other comments?

Mr. **WEWER**. Mr. Chairman, I would comment, setting aside of course the first amendment difficulties which are significant in your proposal, as a matter of simple market competition, the subscription television industry certainly finds that negativism and downgrading of American principles and standards does not sell subscriptions. Given the opportunity to compete fairly in the marketplace, we will put on what people want to buy which does not involve comment after comment of deriding the American system.

I think the important thing is, as my colleagues mentioned, that each of us be given the opportunity so that there be diversity and the opportunity to do whatever seems appropriate and whatever will sell to the viewing public.

Senator **GOLDWATER**. I couldn't agree with you more. As a guy who started out as a Morse code operator, I am still with you.

Thank you very much, gentlemen, for coming.

[Whereupon, at 12:05 p.m., the subcommittee adjourned.]

CABLE TELECOMMUNICATIONS ACT OF 1983

THURSDAY, FEBRUARY 17, 1983

U.S. Senate,
Committee on Commerce, Science and Transportation,
Subcommittee on Communications,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:30 a.m., in room SR-253 of the Russell Senate Office Building, Hon. Barry Goldwater (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR GOLDWATER

Senator **Goldwater**. The hour of 9:30 having arrived, the meeting will come to order. This is the second day of hearings on S. 66, the Cable Telecommunications Act of 1983.

Yesterday we heard from 12 witnesses, most of whom addressed the subject of competition in the marketplace for providers of programing services. They demonstrated very conclusively that there is competition to cable today from a variety of sources: MDS, low power television, subscription television, private cable and over-the-air broadcasting.

Furthermore, the witnesses detailed how there will be even greater competition in the very near future from such services as multichannel MDS, direct broadcast satellites, low-power TV networks and services delivered by fiber optics. None of these competitive services is regulated by local governments; only cable is so regulated.

Now, last year many city officials opposed S. 2172. In an effort to reach an agreement, I asked the cable industry and the cities to attempt to resolve their differences, and I understand that the National League of Cities and the National Cable Television Association are presently engaged in negotiations to accomplish that purpose.

Those meetings conclude tomorrow, I am told. Naturally, we hope they are successful. If they are able to resolve their differences, or at least most of them, in a manner which is consistent with the fundamental principles embodied in this bill, with the overall communications policies of the Commerce Committee, and with the best interests of the public, I shall make every effort to incorporate those resolutions into this legislation.

I decided when I introduced the bill that I cannot and will not wait until these groups conclude their meetings, take the provisions to their boards for approval and then announce their decisions. We cannot delay legislation that long. But I stress again that I will be more than receptive to any changes in my bill at any point in the legislative process to reflect mutual agreement between the NLC and the NCTA which is in the best interests of the American people.

Let me conclude by repeating what I said in my opening statement yesterday, and I can't emphasize this point too much, and I hope it gets through to everybody concerned. It is my firm belief that we need to establish a national policy for cable this year if that industry is to ever realize its full potential. If we do not get legislation soon, I mean this year, the current patchwork system of Federal, State and local regulation of cable will be too firmly entrenched to undo. Not only will the cable industry suffer, but the cities will lose, too. Ultimately, however, it is the consumer who will suffer the most, and I hope we can prevent that.

Yesterday two questions came up to which we found the answers, and I would ask that we make them a part of the record. I don't know what relevancy this has, but somebody brought up the number of words in each newspaper, and we found that the average tabloid has 150,000 words and the average broadsheet or normal newspaper has about 240,000 words, based upon 45 percent newswhole and 55 percent advertising.

On hearings on cable legislation, on S. 2172, we held 5 days of hearings, heard from 74 witnesses, and had about 100 statements for the record. On S. 66 we will have 2 days, 17 witnesses and over 20 statements for the record, which means on this particular legislative approach we will have 7 days, over 200 oral and written statements, which is a pretty good record for this type of legislation.

Now, we are going to follow the same pattern that we followed yesterday. We will have two panels this morning. They will come up and be seated. The first panel will be Mr. Thomas Wheeler, who is president of the National Cable Television Association, and Mr. Frank Greif, director of the Mayor's Office of Cable Communications, Seattle, Wash.

Gentlemen, we are going to allow you 12 minutes each instead of the customary 5 because we don't have a lot of witnesses this morning, and we will give you 12 minutes and the subsequent panel will have 10, so whoever is running the lights, take record of that.

Do you have an opening statement, Mr. Chairman?

The CHAIRMAN. No, I don't.

Senator Goldwater. Senator Pressler.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Yes, I have a very brief one. I will put most of it in the record.

Let me say I want to emphasize and represent before the cable industry and the League of Cities and the U.S. Conference of Mayors that in negotiating an acceptable compromise under differences rate regulation, franchise fee ceilings and franchise renewal procedures, I hope any suggestions resulting from these negotiations will be given every consideration by the subcommittee.

This is an extremely difficult and controversial bill, for a number of reasons. In my view there seem to be two important principles to remember by all involved on this issue. First is the public interest. In other words, how best can we assure that cable services will reach the largest possible audience? What public policies will encourage cable growth in this country?

The question should not be what benefits municipal governments or cable operators or competitors of cable systems will benefit the consumers and potential consumers of cable services. This should be the key principle underlying any cable legislation coming out of this subcommittee.

Second, I hope to see this debate focus on those issues contained in S. 66. It would be unfortunate to see these discussions become embroiled in extraneous issues which can only serve to delay the legislative process. Too many hours of effort have already gone into this measure. If the scope of this bill is unnecessarily expanded, a successful resolution of the differences surrounding S. 66 may not be possible.

Finally, in the spring of 1981 I chaired hearings on the issues of rural telecommunications. Some of today's witnesses testified at that earlier hearing. I believe it would be useful to have an update on some of the recent developments surrounding the technologies and the implementation of these technologies in small towns and rural communities.

Supporters of S. 66 have told me that this legislation would encourage rural cable development. I would hope that representatives of the industry would be specific in proving this argument because I have long heard that we are going to have more cable in truly rural areas and I don't see it developing, very frankly, except in very profitable markets.

Likewise I would ask that those who have reservations about S. 66 would explain exactly what detrimental effects such legislation would have on the future growth of cable service in rural areas, and by rural I am talking about some of the farm country, small towns. I come from a town of 450 people. A lot of people define rural as a much more densely populated area.

Finally, the controversy surrounding S. 66 seems to rest on the question of common carrier or competitive status for the cable industry. There is no question that the number of competitive broadcasting services is growing. Yesterday's hearing proved evidence of that. However, I can imagine many circumstances where a cable system can be construed as a monopoly enterprise or a system offering services similar to that of a common carrier.

I would ask today's witnesses to focus on this principle for purposes of debate and discussion since this seems to me to be the key point.

Mr. Chairman, I have some additional remarks for the record but I will not hold up the committee any further.

Senator GOLDWATER. Thank you.

Senator Gorton.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Thank you, Mr. Chairman, and I would like to thank the witnesses for testifying at these hearings on this imortant issue. I believe we should consider updating the legal framework around cable television. In my view, however, any bill this committee recommends to the Senate must promote competition. This has been the theme of this committee's deregulatory efforts in the past, which I have supported. For cable television our efforts must promote a competitive marketplace for cable services and must not interfere without good reason with the freedom of contract that presently exists for the franchisors and franchisees.

Yesterday the committee heard from providers of new technologies that they hope will compete with cable services. We must examine each of these new technologies to see if they provide services that are competitive with cable, quality that is competitive with cable, and at a cost that is competitive with cable. We must not forget that cable can offer a multichannel service with two-way capacity at a relatively low cost. None of the new technologies presented yesterday can rival cable's services. Some lack multichannel capacity, most lack two-way potential, and many are still in a developmental stage. Indeed, Mr. Bortz concluded yesterday that cable television will be the dominant television medium in this country and that alternative services may capture only 5 to 10 percent of the marketplace.

I would like to say that I am heartened by the spirit of cooperation the cities and the cable companies have shown in their willingness to meet and negotiate over the legislation they would like to see this committee produce. Ultimately all successful legislation in Congress is the result of cooperation and reconciliation. These are the processes of the Democratic system and I look forward to seeing the results of the negotiations.

Senator **Goldwater**. We will start with Mr. Wheeler. We are giving you 12 minutes today, so you can act like a Senator.

You have a long time and you don't have to say much.

STATEMENT OF THOMAS E. WHEELER, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION

Mr. **Wheeler**. Well, normally we are up here trying to squeeze something into 5 minutes and have to practice the Evelyn Wood speedtalking routine. Today, I have a prepared statement that runs about 5 minutes, so we will see if we can have some time left over for discussion afterwards.

We are here in behalf of the cable television industry to support S. 66. As this committee's action last year, and, Mr. Chairman, your quick action this year and your opening statement this morning recognize, there is a need for Federal cable television policy.

Yesterday, you heard a litany and more of competitive services, and this morning, Mr. Chairman, you characterized it as being a conclusive litany: That the marketplace is changing and that there are a vast number of new services competing with cable for the consumers' loyalty.

Rather than go back and review that litany again, I would just point to you this chart right here, which is a collection of headlines from recent general press articles about the communications revolution. It just lists, time after time after time, the new alternative services that consumers have available to them in addition to cable television.

But, even beyond these competitive services, the competitive reality extends even farther. Cable systems are overbuilding each other, and, by overbuilding we mean that a consumer will have a couple of choices of cable companies. There will be two cable wires running down the street. There are now 83 communities in America where you have this kind of competitive choice, and it is on the upswing.

We also find that the deregulation and divestiture of AT&T has Ma Bell offering to build a cable plant as well as offering competitive information services, and we find also that the independent telephone companies are getting support at the FCC to be allowed to offer cable television service in their service areas.

So, in addition to the alternative technologies that we have already heard about, we see cable operators overbuilding each other and the telephone companies entering, both in terms of provision of hardware and software services.

Now, the result is that, while some look at cable's lone wire and pronounce it a monopoly, the reality is that cable is highly competitive and fighting for its share of the market. The monopoly perception, however, has put cable in the catch-22 kind of a trap. Cable isn't a monopoly but it is regulated as one, and, as a result, cable is prevented from being fully competitive with these new services, all of which are unregulated or deregulated.

In other words, cable is subjected to governmentally imposed competitive disadvantages, all of which are based on a flawed perception. Does an MDS system, for instance, have to pay 5 percent of its gross revenues to the city? No. Does an SMATV system have to give away a significant portion of the channel capacity which it built and paid for? No. Does a DBS system have to ask permission before adjusting its rates? No. Does an STV station put its continued existence in the hands of a local political group? No.

In fact, this week, this committee took a step toward stabilizing broadcast licenses—such as STV licenses—when it approved S. 55. As a matter of fact, none of the competitive services has to bear any of these burdens except that the cable system has to bear them all.

Now, Mr. Chairman, your bill does not eliminate all of these inequities, but it does help to level out the playing field on which we all must compete. We have also, at your request, as you indicated at the beginning of the hearing, been working with the representatives of the Nation's cities to resolve some of the difficulties and some of the disputes we have had in the past.

Under the leadership of Mayor Charles Royer of Seattle, and Frank Greif, the director of cable communications for Seattle, we have been meeting with the National League of Cities to attempt to develop an agreed-to policy which we can both recommend to the Congress. We meet again tomorrow, as you indicated.

I hope we can reach a compromise. However, there are a few basic points which you recognize in S. 66 which must be recognized if these negotiations are to be successful. For instance, where competitive alternatives exist, cable must be deregulated so that it may compete. Cable operators should not be the collectors of hidden taxes in the form of ever-increasing franchise fees.

The fact that a cable operator must seek approval to build a cable system does not give a city the right to lay claim to vast portions of his channel capacity, and cable operators have the same right as other businessmen to expect that if they do a good job, they can stay in business.

Finally, Mr. Chairman, the need for a national cable policy like S. 66 is graphically demonstrated by the kinds of unfortunate occurrences which are happening nationwide. My written statement contains a long list of abuses by local governments. Let me run through a couple of them.

One city is threatening its local cable operator with retribution if the National Cable Television Association doesn't bring its convention to that city.

Marquette, Mich., told its franchise holder that he would not be renewed, not for cause, but because a local group, financed by banks on whose boards responsible city officials sit, wanted to build a virtually identical system.

Another city, whose name I can't give you, at the request of the cable operator, because of his fear of retribution, denied a basic service rate increase to the cable operator on the grounds that the system's parent company operated a profitable pay cable service, a fact which, of course, has absolutely no bearing on the financial viability of the local cable system.

Dearborn, Mich., used its first franchise fee, not to cover the cost of regulation as specified in the FCC rules, but, to construct a stainless steel pylon and reflecting pool at City Hall.

And finally, the town of Amberly Village, Ohio, which, upon being told by a court that Federal policy prohibited it from regulating pay rates, announced that while it would obey the court, it would have the last laugh when the cable operator came back to seek renewal of its franchise.

These are representative problems, and I don't mean by any stretch of the imagination to suggest that these are generic problems or to impugn all local governments, but the fact is, these kinds of abuses are a virtual mathematical certainty absent Federal legislation.

There are so many cities and so many operators and so many potential issues in conflict that these kinds of conflicts and abuses simply must occur. The fact that they occur distorts the marketplace and injures consumers, and it is ultimately for that reason—the enhancement of consumer service—that S. 66 must become law.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF THOMAS E. WHEELER, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION

Mr. Chairman, members of the subcommittee, my name is Thomas E. Wheeler and I am president of the National Cable Televison Association.

I am honored to be here today to present testimony on behalf of the cable television industry. In particular, we are grateful to you, Chairman Goldwater, for the prompt and timely introduction of S. 66, the Cable Telecommunications Act of 1983. Like you, the cable industry was disappointed when S. 2172, after being reported out of committee, ran out of time in the 97th Congress. We intend to support your leadership, Mr. Chairman, and work for the enactment of a public law on cable television before the year is out. Such a law is not only right, it is absolutely necessary if consumers are to enjoy the benefits of cable television service on a fair and equitable basis.

The cable television industry strongly supports S. 66. In some fundamental ways it improves on S. 2172 and, I believe, makes the bill more consistent with the cable deregulation efforts championed last year by the distinguished ranking member of this committee, Senator Hollings.

Since the committee has previously reviewed this topic at length, our testimony today will focus on a ressertion of the three essential issues surrounding this debate.

First, a review of the marketplace in which cable competes today and a peek into the near-term future to see how that marketplace is changing. In the process, we will once again demonstrate that there is no factual basis for the popular myth that cable is somehow a monopoly. As you know, it is on the slender and erroneous thread of the myth that virtually all justification for local regulation of cable television hangs.

Second, we will touch briefly on the efforts NCTA is making with the National League of Cities to reach a concensus on the many controversial issues which arise when one sets out to create a national cable policy. In short, while we strongly support S. 66 and urge its adoption, we are not just dropping all our problems in the lap of the Congress and sitting back while you take the inevitable political heat: we're right in the kitchen with you, trying to cooperatively develop a rational policy.

Finally, we will review why Federal guidelines are necessary and appropriate to the continuation and expansion of the consumer services offered by cable television operators. We do not seek Federal protectionist legislation nor do we seek regulations which will disadvantage our competitors. All we seek, Mr. Chairman, is the right to compete on a level playing field unburdened by requirements imposed by local governments which place us at a competitive disadvantage by imposing costs on our subscribers.

THE COMPETITIVE MARKETPLACE

Chart 1 [1] of this testimony is a photomontage of recent press headlines proclaiming new competition for cable systems from other distribution technologies. Included as attachment 1 to this testimony are the full articles which followed these headlines. What these articles describe is a fiercely competitive environment in which cable and the other media vie for the consumer's dollar. It is that competition, we submit, which not only eliminates the need for much of the local regulation to which not only eliminates the need for much of the local regulation to which cities are subjected but which also demands that all competitors be created equal, that no individual competitor be burden with governmentally imposed competitive disadvantages.

We have shown you headlines describing a competitive cable marketplace in general terms. Now let's look at the specifices of that competition. Again, rather than take my workd for it, let's rely on the press accounts of these new services. It seems that hardly a day goes by when you don't pick up a trade or general circulation publication which is reporting on a new service which will be competitive to cable. Attachment 2 [2] is a collection of such articles for the past month. Even with that tight time constraint the collection lists more examples than we can cover today. Nonetheless, let me share just a few of these recent examples with you.

United States Satellite Communications—formerly known as USTV—announced the "largest venture capital startup in history"—$50 to $100 million—to begin Direct Broadcast Satellite service to the United States later this year. The company plans to offer five channels of movies, sports, new and pay-per-view events not only to residences, in direct competition with cable, but also to our other competitors—MDS, lower-power television and SMATV systems—as well. The firm's president further describes the new service as competitive in nonentertainment services as well. USSC, he commented, could "transmit all sorts of services—financial, educational—and we intend to exploit these areas as well." This is not a mad scientists' pipe dream it will be operationsl this year and is backed by Prudential Insurance, a company not known for taking wild flyers on untested ideas.

USSC is not the only DBS company in the market either. Last fall, the Commission granted construction permits to numerous other applicants as well, and more are waiting for approval.

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[1] Retained in committee files.

[2] Retained in committee files.

Satellite Television Corporation (COMSAT); United States Satellite Broadcasting Company (Hubbard Broadcasting); Direct Broadcast Corporation; CBS; RCA; Western Union; and Video Satellite Systems, Dominion Satellite Network.

In the interests of time, we are attaching a summary of each company's proposal for the record.

Another competitive service which was in the talking stage last year but this year is a competitive reality is low-power television. The FCC is in the process of issuing 2,000 licenses for this new service. Many have already been granted. And low power is not just a big city service, it will compete with cable in even the smallest communities. For instance, LPTV licenses have already been granted for 160 stations. Not only do these stations offer competitive programing, some are scrambling their signal and sending a pay movie service directly competitive to cable.

In last year's testimony we focused at length on the enormous growth of Satellite Master Antenna Television systems—SMATV's. These systems are technologically identical to cable systems and deliver the same kind of programing. They have only one characteristic which distinguishes them from a cable system—they do not cross city rights of way and are thus free of any regulation. With the uses of FCC microwave licenses which were established as a means of interconnecting cable systems, SMATV systems no longer need be confined to single apartment or condominium projects, but instead can use a single head-end to distribute cable programing thoughout the city to other multifamily complexes without using the public rights of way, and therefore not requiring city approval of a franchise. Isn't it fascinating that these "private cable" systems, when interconnected by microwave, actually cross city streets but do it in a manner preempted by the Federal Government. As a result they are free of paying a franchise fee or any other form of tribute demanded by the cities.

SMATV's are even getting their own satellites. RCA has decided to equip its three new Ku-band satellites with 40-watt transponders—instead of the more common 20-watt used by cable systems. This translates into even smaller, less expensive earth stations which means that even the smaller grouping of residences can have its own "private cable" system free from any cost burdens imposed by city government.

Even our friends at the National Association of Broadcasters, long the most vocal and active opponent of cable television, have jumped on the SMATV bandwagon. In a just issued special report NAB urges its members to go into the SMATV business in order—and I quote—to "skim the cream off the usually affluent multiple dwelling unit market" before cable arrives. As we have been discussing, SMATV systems are not only exempt from local franchising demands, they are also free from the FCC's must-carry requirements as well. Thus, while the local broadcasters and the NAB continue to push for Federal policy which allows the broadcaster to expropriate cable channel capacity without remuneration they are actively going into a competing business, identical to cable in every way except the fact that it doesn't have the kinds of regulatory burdens imposed on cable operators, such as the must-carry rules.

The list of our competitors is hardly over.

MDS.—Multipoint Distribution Service is a growing source of competition for cable and is approaching one million subscribers nationwide. To date, MDS has made inroads on cable merely by offering a single channel of premium programing. Now, however, the leading company in the industry has petitioned the FCC to allocate the equivalent of 15 MDS channels in each of the 50 largest markets in order to create an "urban, over-the-air wireless cable network". Telephone lines could then be used to make this multichannel MDS service two-way.

Subscription Television.—STV also offers premium programing to nearly three million subscribers nationwide using scrambled television signals. Last year the Commission eliminated its remaining restrictions on broadcasters utilizing STV, and many of the 2,000 low-power stations can be expected to adopt this technology to capture a share of the pay TV market. And like MDS, the STV industry is beginning to move into multichannel service to compete head on with cable.

ABC and CBS are getting into these businesses as well by taking advantage of the growing popularity of home video cassette recorders (VCR's). Both networks plan to distribute such premium programing as first-run, uncut movies during the early morning hours directly to subscribers' VCR's. ABC is already test-marketing its Home View Network which involves the transmission of STV signals by its affiliate stations. CBS's plan, while similar, would utilize microwave, or MDS, distribution.

Finally, the coming-of-age of fiber optic cable in the telephone industry promises to provide enormous capacity which can be utilized by others to compete head-on with cable in many markets. Press reports of AT&T's new Washington-New York fiber optic link note that the half-inch fiber optic link is capable of carrying a traffic volume twice that of coaxial cable almost five times larger. As fiber optic cable is utilized in the local loop, this direct competition will become a reality.

There are two conclusions which can be drawn from this recitation. First, cable's competitors are universally deregulated or unregulated. Either through direct Federal intervention or through quirks in the law, these services are beyond the reach of local governmental authorities. As a result these competitors enjoy a significant competitive advantage. They don't pay franchise fees, they don't have to give away service, they don't have to underwrite various local ventures from production studios to police firing ranges, they don't have to go to a regulatory body to seek permission to adjust rates or services and they don't have to expose their business to local political hyjinks when their license is up.

Second, there is no way that cable can be described as a monopoly in the face of all these alternative delivery methods and alternative services. We may be the only wire in town (even that isn't true when one considers unregulated SMATV's and telephone company provision of competitive pathways) but cable systems aren't the only way consumers can receive various services.

ONGOING NEGOTIATIONS WITH THE NATIONAL LEAGUE OF CITIES

In my opening remarks, I said that the cable industry did not plan to leave this committee in the kitchen, all by itself, to suffer the political heat a farsighted bill such as S. 66 invariably brings. At your urging, Senator Goldwater, the President of the National League of Cities, Mayor Charles Royer of Seattle, and I exchanged letters last fall as a prelude to opening channels of communications between our two organizations.

Neither of us wished to continue, unnecessarily, our battle in the 98th Congress. We both recognized that confrontation, deadlock and stalemate served neither the public interest nor the interests of our constituents. As a result, we agreed to start talking with each other to see if the issues which had long divided the NCTA and the NLC could be recast in such a way that we could for once agree with each other and come to the Congress with a proposal both sides could support. To that end, the NCTA and a delegation of key cable coordinators from around the country have been meeting since November. The NLC negotiating team is ably led by my colleague at the table this morning, Frank Greif of Seattle. I have an enormous amount of respect and admiration for Frank and his compatriots. These have truly been negotiations in good faith which have seen much give and take on both sides.

A great deal of progress has been made to date, and many contentious issues have been tentatively laid to rest. Indeed, Frank and I, along with our respective negotiating teams, will meet again tomorrow. I have my fingers crossed that we be able to reach a tenative accord on all the problems which continue to divide us.

I would like to add these notes of caution, however. While the NCTA and the NLC may be closing the gap between us, there is no guarantee that we can reach an ultimate agreement. While tentative agreement has been reached in some areas, those agreements are subject both to more detailed language and to the ultimate resolution of several other, more fundamental, problems which remain. As a result, I trust you will appreciate that it would be premature to discuss in any more detail the progress we have made. Consequently, I believe this committee should be moved ahead in its own deliberations on the important public policy questions addressed in S. 66.

Second, I do not want to leave even the slightest impression that the NCTA somehow believes that our negotiations with the National League of Cities takes precedence over the activities of the committee. I do not believe you should, or would, take any solution presented to you by the NCTA and the NLC without your own evaluation of its merits. You are the arbitrars of the public interest, and I would never pretend that our current negotiations should be a substitute for your responsibilities. It is appropriate that both this subcommittee and the House subcommittee should sit down with the two parties to make certain Congress' concerns are addressed in the final agreement, if any. Having said that, I believe that our two organizations share your concern for this public interest and are endeavoring to bring forth a compromise which maximizes that interest.

FEDERAL GUIDELINES AND STANDARDS ARE A NECESSITY

Finally, Mr. Chairman, let's look at how real life examples of the relationship between cable operators and local governments cry out for the imposition of uniform Federal guidelines and standards. After all, an old addage in politics is that "if it ain't broke, don't fix it." You have too many critical problems facing the country to spend time fixing things that aren't seriously broken. We submit that the relationship between cable companies and the towns and cities of America has broken down to the point where a Congressional repair job is desparately needed.

To understand why the problem is so serious, it is first necessary to understand the unique position cable companies are in vis-a-vis local franchising authorities.

First, cable is the only telecommunications business which cannot reach its potential customers without first receiving approval from the local government. Moreover, this approval, or lack thereof, can be completely arbitrary and varies from city to city. This local authority, of course, derives from the fact that the cable necessary to deliver our product occupies an infinitesmal portion of the public rights of way. Quite simply, without city approval a cable operator can't be in the cable television business. To understand this point is to understand why cable operators often agree to plant trees, or computerize the public library's card catalog in order to get a franchise.

Second, there is a basic misconception that the relationship between a city and a cable operator is that of buyer-seller. This line of reasoning holds that any demand a city makes, however unreasonable, is just part of the normal customer-supplier negotiating process. Nothing, however, could be further from the truth. The cable operator may be the seller but the city is not the buyer—those are the residents in the community. The city is a barrier standing between a cable operator and his potential customers. It is definitional that a barrier of that kind extracts tribute from those wishing to surmount the obstacle. The city is not the buyer of a cable service for its people. It is, at best, the broker, through whom the seller must go if he is to ever reach his potential market. Like any broker, the city extracts a price for permitting access to the potential customer. It is the manner in which payment is extracted and the impact of that payment on consumers and a competitive marketplace which is the subject of these hearings.

Third, I don't know of any other private enterprise where a city can demand free services as the price of doing business. Is it fair for a local government to demand free milk for its school lunch program in exchange for issuing a building permit to a local dairy? Do you know of any locality where the city offices receive free telephone and electric service in exchange for these services' use of the rights of way? Yet, routinely, cities demand free institutional loops, free channel capacity, free studios and equipment and money to program these channels—all as a price the cable operator must pay before he can attempt to sell his services to the real customers.

Let me emphasize that these comments are generic representations of specific problems. I do not believe local governments are out to "get" cable operators. I do believe, however, that with 19,000 communities and 5,700 cable systems and literally hundreds of potential issues between the operator and the city, that sheer mathematics suggests that, absent uniform standards and guidelines, there are bound to be conflicts wherein the city comes between the buyer and seller, to the detriment of both. Let me give you some real life examples of the kind of conflicts which ought never to exist but nonetheless do. It is important to recognize that not every city engages in each of these abuses, but enough cities do and there are enough areas for continuing abuse that something must be done to uniformly establish what cable operators and cities may and may not do.

Cities seek to leverage off their position as cable regulator to secure gains in totally unrelated areas

One city threatened the local cable company with retribution if NCTA didn't bring its national covention to the city;

The Mayor of St. Louis boasted that part of the price of winning his city's franchise would be the funds necessary to reopen a municipal hospital.

In Sacramento, it took the promise of planting 20,000 trees to finally win franchise approval.

In Baltimore's Request For Proposal, cable operators will be required to give away its service, free of charge, to handicapped residents.

Cities refuse without good basis to renew a franchise of a company which has been providing good service

In Marquette, Michigan, the city told the franchise holder that he will not be renewed in order that a virtually identical system may be built by a local group financed by several banks on whose boards several of the same city officials sit;

A similar situation developed in the small town of Spencer, Iowa, where the cable operator upgraded his system to 35 channels, most of it underground. When he refused to sell out to a local group at 50 cents on the dollar, the city council revised its cable ordinance to require 54 channels as the price of a refranchise even though the operator was 80 percent of the way through with his upgrade.

Ventura, California, officials sought new applications for its franchise even though the incumbent operators had guaranteed right in the original franchise to be renewed and begun upgrading the system with this expectation.

Even though the operator in Narrows, Virginia, had provided service since 1969, the town abruptly revoked his franchise—an action the courts found "drastic, unreasonable and arbitrary" in reversing the town's decision.

Cities abuse their authority to regulate basic service rates

A city—which we cannot name because the operator fears reprisals—denied a basic service rate increase to the cable operator because a pay television service operated by the operator's parent company is profitable, a fact which, of course, has no bearing on the financial viability of the local cable system.

The cable operator in Pleasant Hill and Martine, California, attempted to raise his rates for basic service under the terms of a recently enacted state statute. Not only did the city officials refuse to allow the rate increase, they actually attempted to revoke the operator's franchise.

Cities see cable as the golden pot at the end of the rainbow

Peoria, unhappy that the FCC's franchise fee ceiling had made its 10 percent fee illegal, went to court to overturn the ruling on the grounds the money was needed to balance the budget.

Miami, unwilling to wait until its 5 percent franchise fee would generate income, demanded $2.5 million in "up-front" prepayments. Chicago sought up to $4 million in early payments.

Nearby Fairfax County, Virginia, made the successful cable bidder promise a 10 percent franchise fee, to be effective whenever the FCC's ceiling was lifted.

Not satisfied with the maximum 5 percent franchise fee, Detroit sought to impose an additional 3 percent of the gross revenues to support local programming.

When Rockford, Illinois, discovered its sliding scale, 5–12 percent franchise fee would no longer be allowed under the Commission's ceiling, it demanded that the 3 percent ceiling be applied against pay TV revenues even though the franchise agreement had specifically excluded such revenues.

Since the property taxes Idaho cable systems pay on their plant weren't generating enough revenue, the state changed its system to include the value of the cable subscribers (at $290 per person) in order to increase property tax collections from cable companies by up to 400 percent!

The franchise fee ceiling is intended only to reimburse cities for the reasonable costs of regulating cable. However, Dearborn, Michigan, officials must have money left over when it used its first franchise fee payment to construct a stainless steel pylon and a reflecting pool at the city hall.

Finally, some cities blindly ignore the case law developed around cable television. Let me give one more example. In the town of Amberly Village, Ohio, for instance, city officials recently took the cable operator to court because he had raised the rate charged for pay TV services. The court promptly dismissed the suit on the grounds that *Brookhaven* v. *Kelly* established that state and local governments had no authority to regulate pay cable services. Nevertheless, the city has announced that they'd have the last say on the matter when the franchise came up for renewal. In other words, they're telling the cable operator, "you may have the law on your side now, but wait until we get you in our forum where we hold all the cards, then you'll live to regret the fact you wouldn't let us ignore federal policy."

Mr. Chairman, Members of the subcommittee, I believe that S. 66 provides exactly that sort of solution. It reaffirms that the federal government has the primary jurisdiction over cable just like it does over the rest of the telecommunications industry; however, S. 66 does not establish new federal regulatory burdens for cable at the very time this Committee is properly moving to deregulate cable's competitors. This bill grants franchising authorities specific and extensive regulatory authority over cable for those matters of legitimate local concern—authority far greater than has been granted over any competing telecommunications service. Finally, it leaves to the consumers in the marketplace those aspects of cable television service which are most ameniable to the discipline of millions of individuals making their own decisions, free of interference from bureaucrats at any level of government.

That I submit to you, is fair, reasonable and a long-overdue exercise of common sense.

Senator GOLDWATER. Thank you, Mr. Wheeler.

Mr. Greif, you may proceed.

STATEMENT OF FRANK GREIF, DIRECTOR, MAYOR'S OFFICE OF CABLE COMMUNICATIONS, SEATTLE, WASH.

Mr. Greif. Thank you, Mr. Chairman. My name is Frank Greif. I am the director of the Mayor's Office of Cable Communications for the city of Seattle, and I am appearing on behalf of the National League of Cities, which, as you know, represents nearly 15,000 cities of all sizes throughout the country.

I also serve as chairman of the National Association of Telecommunications Officers and Advisers, a professional organization of cable and telecommunications officers for cities and counties all across the country.

Before I go into the prepared remarks, there are two comments I would like to make following up on Mr. Wheeler's statement. One is that I will attempt for the next couple of moments to explain that in fact everyone is seeking a level playing field, but it is important to understand that in addition to the industries, the public also plays on that field.

I could also parade a long list of situations where the cable operators have failed to perform, but I will not do so. I could also do a long list instances of where cities and counties and cable companies have worked together. I do not believe the problems that Mr. Wheeler spoke of a moment ago are representative. I do agree with him, however, that they are not generic.

To me the central issue in the debate on cable policy is the extent to which the marketplace for cable is, in fact, competitive. The cable marketplace is actually made up of two complementary businesses. The first, and of primary concern to local government, is the business of constructing and operating the physical wires and other equipment over which cable services are provided.

The second is the business of providing those distinguishable communications services which are then sent over the wires. The first of those two businesses, the one constructing and operating the distribution facilities, is invariably a monopoly business. The high capital cost of constructing and operating cable distribution systems have almost totally eliminated the possibility of head-to-head competition between cable operators, and as in the case of any other natural monopoly, these costs decline as the market penetration rate increases and the number of services provided increases.

Morever, if a second operator were to try to enter a market already served by another operator, the first operator has sufficient market power to undercut whatever prices are offered by the second, making entry into an already wired market nearly impossible. Clearly, such control makes the cable system itself a monopoly.

By contrast, the market for communication services has the potential of becoming competitive. A variety of services, such as one-way video and two-way video and nonvideo services are currently available, as you mentioned earlier, Mr. Chairman. They can be distributed over cable or by a number of other electronic means, including DBS, MDS, LPTV, and STV.

Just how well that competition among providers of communication services develops depends upon the availability of distribution systems, which are, in fact, real alternatives to cable in terms of both efficiency and cost. In fact, most of the supposed alternatives, DBS, MDS, LPTV, and the others, do not have the capacity to provide the full range of services that can be provided over a cable system.

These other technologies are primarily transmitters of one-way video programing and data services. By contrast, a cable system is a broad-band communication system which, due to its capacity for the transmission of a wide range of frequencies, can send video, voice, data communications of good quality at high speed in opposing directions in large volume all at the same time.

The others cannot. Cable is unique. It is also a monopoly delivery system. We recognize that one should not look only at the transmission facilities, even though they may exist without real competition. One must also examine the overall service potential of the cable and how that potential is used.

A comparison of the average monthly cable fee with the fee charged to subscribers of STV and MDS is illustrative. Cable services cost about $1.43 per channel. That is based on an average monthly fee of $17.17 for 12 channels or more, 12 channels of video programing, including one pay programing service. That is just $1.43 per channel.

Subscription television costs about $19.25 per channel, and MDS costs about $16.25 per channel. These figures suggest that a cable system generally provides the most economically efficient method for delivering one-way video services. Thus, it should be evident that a cable operator, given the absolute right to determine what communications services are carried over his or her uniquely efficient distribution system, has an extraordinarily competitive advantage over the other providers of distribution facilities.

As the franchisers of cable systems, local governments have a responsibility to ensure that cable operators do not abuse this advantage by arbitrarily excluding potential users of that monopoly system. Whenever a city authorizes a privately owned business to construct and operate its plant on public property, it must establish, in my opinion, a certainty that the public that gives up its right for that private business to operate has an opportunity to be served by that business.

In this case, the public should have an equal opportunity for access to the monopoly distribution system it has permitted to use the public's property. When it grants a franchise for the construction and operation of a cable television system, a city is, in fact, acting as the bargaining agent for the collective interest of the community. In this process it should be expected to obtain, through a competitive franchise process, a cable system that meets the community's communication needs, and those needs involve both today and tomorrow.

Cable communications systems, because of their wide range of capabilities, are becoming an increasingly important component of the communications infrastructure of our communities. As our Nation's economy becomes more service oriented and, consequently, more dependent on the efficient flow of information, this new electronic infrastructure takes on additional significance. In fact, 50 percent of all economic activity in the United States is now said to involve the creation, storage transfer, retrieval and use of information.

Eventually the economic viability of urban areas may well be determined by the quality of the highways of this new commerce or their communications infrastructure, including cable. It is therefore imperative, I believe, that cities play a leading role in determining how this new infrastructure is developed, just as cities have planned the development of other infrastructure components such as bridges, streets and transportation systems.

Through the franchising process the city has an opportunity to participate in the planning of a cable system on a partnership basis with the cable operator in a way that serves all of the community. This arrangement has a certain symmetry to it. The customers of the cable system, after all, are also the citizens of the city. As a bargaining agent for those citizens, it is local government's responsibility to deal with such matters as system configuration and design, capacity requirements, construction schedules, the provision of specific services and facilities, and the availability of service throughout the community.

It is in this manner that the interests of the public are served. As it establishes ground rules for the installation of cable system, a city is required to reconcile several goals that may not always be completely compatible.

First, the interest of consumers must be protected by such franchise provisions as mandatory citywide service and limits on rates for installation and delivery of a minimum level of service. Second, the facilities of a cable system must be made available to potential users of the system such as programers and service providers on a fair and equal basis.

Third, the cable operator must have the ability to respond to changes in market conditions impacting the service side of that business and to operate the system in as flexible a way as possible.

We believe that S. 66 does not provide any real protection for the interests of the consumers and the potential users of the system. In fact, it renders the task of local government, as I have outlined it, impossible. We recognize that cable operators should not be subject to excessive Government regulation. We believe that Federal cable policy must give equal consideration to the rights of consumers and potential users as well as those of the cable operators.

I have in my prepared text a review of some of the very specific sections of the bill and how they impact how cities go about their cable activities, but I will leave that for further discussion. I would, however, like to submit my prepared statement at this time.

Thank you.

[The statement follows:]

STATEMENT OF FRANK GREIF, DIRECTOR, MAYOR'S OFFICE OF CABLE COMMUNICATIONS, SEATTLE, WASH.

I am Frank Greif, Director of the Mayor's Office of Cable Communications for the City of Seattle. I am appearing on behalf of the National League of Cities (NLC), which represents nearly 15,000 cities of all sizes through direct membership or membership in 49 affiliated state municipal leagues. I also serve as Chairman of the National Association of Telecommunications Officers and Advisers (NATOA), a professional organization of cable and telecommunications officers from cities and counties. NATOA was established by NLC in 1981.

The bill before the Committee—The Cable Telecommunications Act of 1983 (S. 66)—is, in our view, a fundamentally flawed approach to national cable policy. The bill which designates the Federal Government as the primary regulator of cable, turns on its head the current jurisdictional framework, a framework which recognizes that in almost all ways, cable is a uniquely local medium most appropriately regulated be local governments. From the cities' point of view, S. 66 is an usurption of fundamental state and local powers and a forced abrogation of freely negotiated contracts.

I. THE CITIES' VIEW OF CABLE

The central issue in the debate of cable policy is the extent to which the marketplace for cable is competitive. The cable marketplace is actually made up of two complementary businesses. The first, and of primary concern to local government, is the business of constructing and operating the physical wires and other equipment over which cable services are provided. The second is the business of providing those distinguishable communications services which are sent over the wires to consumers.

The first of those two, the business of constructing and operating the distribution facilities of a cable system, is invariably a monopoly business. The high capital costs of constructing and operating cable distribution systems have almost totally eliminated the possibility of head-to-head competition between cable operators. As in the case of any other natural monopoly, these cost decline as the market penetration rate and the number of services provided increase. Moreover, if a second operator were to try to enter a market already served by another operator, the first operator has sufficient market power to undercut whatever prices are offered by the second, making entry into an already wired market nearly impossible. Clearly such control makes the cable system itself a monopoly.

By contrast, the market for communications services has the potential of becoming competitive. A variety of communications services, such as one-way video programing and two-way video and non-video services, are currently avialable. Those services can be distributed over the facilities of a cable system and can also be provided to consumers by a number of other electronic means. Other distribution technologies currently in use (or expected to be in use shortly) include direct broadcast satellites (DBS), multipoint distribution services (MDS), low power television (LPTV), satellite master antenna television systems (SMATV), and subscription television (STV).

Whether competition among providers of communications services develops depends upon the availability of distribution system which are real alternatives to cable in terms of efficiency and cost. In fact, most of these alternatives—e.g., DBS, MDS, LPTV, SMATV, and STV—do not have capacity to provide the full range of communications services that can be provided over a cable system. These other technologies are primarily transmitters of one-way video programing or data services. By contrast, a cable which is a broadband communications system which, due to its capacity for the transmission of a wide range of frequencies, can send video, voice, and data communications of good quality, at a high speed, in opposing directions, in large volume, all at the same time. Cable is unique. It is also a monopoly.

We recognize that one should not look at the transmission facilities alone, even if they do exist without real competition. One must also examine the service potential of the cable and how that potential is used.

A comparison of the average monthly cable fee with that charged to subscribers of STV and MDS is illustrative; Cable service costs about $1.43 per channel. That's based on an average monthly fee $17.17 for 12 or more channels of programing including one pay programing service. Subscription costs about $19.25 per channel; and MDS costs about $16.25 per channel. These figures suggest that a cable system generally provides the most economically efficient method for delivering one-way video services. Thus, it should be evident that a cable operator given the absolute right to determine what communications services are carried over his or her uniquely efficient distribution system, has an extraordinary competitive advantage over any other provider of distribution facilities.

II. THE CITIES' REGULATORY RESPONSIBILITIES

As the franchisors of cable systems, local governments have a responsibility to ensure that cable operators do not abuse their position as gatekeepers to cable systems by arbitrarily excluding potential users of the monopoly system. Whenever a city authorizes a privately-owned business to construct and operate its plant on public property—the public rights-of-way in this case—it must establish protections for the general public's right to be served by that business. In this case the public should have an equal opportunity for access to the monopoly distribution system it has permitted to use the public's property. The construction and operation of a natural monopoly under a franchise designed to protect the public's interest carrys with it certain regulatory responsibility.

When it grants a franchise for the construction and operation of a cable system, a city is acting as the bargaining agent for the collective interests of the community. In this process it is expected to obtain, through the competitive franchise process, a cable system that meets the community's communications needs. The franchise process allows the city to define those needs and to negotiate for an up-to-date system.

Cable communications systems, because of their wide range of capabilities, are becoming an increasingly important component of the communications infrastructure of our communities. As the economy becomes more service oriented and consequently more dependent on the efficient flow of information, this new electronic infrastructure takes on additional significance. In fact, 50 percent of all economic activity in the United States is now involved in the creation, storage, transfer, retrieval, and use of information. Eventuallly, the economic viability of urban areas may well be determined by the quality of the highways of this commerce, or their communications infrastructure.

It is therefore imperative that cities play a leading role in determining how this new infrastructure is developed, just as cities have planned the development of other infrastructure components such as bridges, streets, sewage and water facilities, and transit systems. Through the franchise process the city has an opportunity to participate in the planning of a cable system on a partnership basis with the cable operator in a way that serves all of the community. This arrangement has a certain symmetry to it: the customers of the cable system are also the citizens of the city. As a bargaining agent for the citizens, it is local government's responsibility to deal with such matters as system configuration and design, capacity requirements, construction schedule, the provision of specific services and facilities, and the availability of service throughout the community. It is in this manner that the interests of the public are served.

As it establishes ground rules for the operation of a cable system, a city is required to reconcile several goals that may not always be completely compatible. First, the interests of consumers must be protected by such franchise provisions as mandatory city-wide service and restrictions on the rates for installation and the delivery of a minimum level of service. Second, the facilities of a cable system must be made available to potential users of the system, such as programmers and service providers, on a fair and equitable BASIS. Third, the cable operator must have the ability to respond to changes in market conditions impacting the service side of the business and to operate the system in as flexible a way as possible.

We believe that S. 66 does not provide any real protection for the interests of consumers and potential users of the system. While we recognize that cable operators should not be subject to excessive Government regulation, we believe that Federal cable policy must give equal consideration to the rights of consumers and potential users as well as those of cable operators.

III. IMPACT OF S. 66 ON CITY AUTHORITY

If S. 66 were to become law, it would eliminate all meaningful local regulation. The "marketplace" rather than the franchise process would determine the availability of the cable system and the prices for cable services. Since competition between cable operators is nonexistent, there is no "marketplace" to provide protection for the interests of the consumers and potential users. In five major ways, S. 66 will have a devastating impact on the public interest.

First: A city would be prohibited from establishing service and facility requirements in the franchise agreement. Section 607 prohibits the inclusion of any service or facility requirements.

Section 607(b) is an outright ban on any regulation or restriction having to do with the provision of or nature of any cable service, other than broadcast or access programing provided over a cable. As a result, a franchise agreement cannot require the provision of specific programing even if that programing was voluntarily offered by the cable operator during the franchise process as a way of meeting unique local needs. Similarly, section 607(c) prohibits the regulation or restriction of any telecommunications service, defined as any two-way service such as security services, and meter reading. This means that a franchise agreement cannot require the provision of specific services even if those services were voluntarily offered during the Franchise process to meet the needs of a local community.

Of overwhelming concern is the clause in section 607(c) which invalidates any provision of a franchise agreement which requires the construction of a cable system with a specific design or capacity. In other words, a franchise could not require two-way capability, institutional networks, or even a minimum number of channels, to meet community needs. This is a result of section 607(c)'s prohibition of franchises that deal with "the provision of or nature of telecommunications facilities offered by * * * a cable system".

As I have stated before, the heart of the franchise process is the ability of local Government to secure services and system facilities which meet the community's communications needs. Section 607 would prohibit a city from establishing or enforcing franchise commitments in this area and would allow the cable operator to determine unilaterally what services and cable system facilities will be provided. Under this provision, a city could no longer require city-wide wiring or establish a construction schedule and plan. To do so would require the city to regulate in some form the provision of telecommunications facilities. Section 607 would prevent local Government from making sure those facilities, strung across the public's rights-of-way, in fact serve all of the public.

In addition to the problems created by section 607, the city's ability to protect the interests of its residents is further eroded by the franchise renewal provision. Section 609(a), which establishes a renewal expectancy for existing cable operators, is likely to establish a virtual guaranteed right of renewal for existing cable operators. This effectively eliminates competition in refranchising and prevents cities from bargaining for up-to-date systems which will respond to today's needs and requirements.

Under section 609, a city is required to renew an incumbent operator's franchise whenever that operator has met a very weak three-part test. First, the cable operator must show substantial compliance with the "Material terms" of the franchise. This requirement is meaningless since virtually all key provisions of franchise agreements have been invalidated by other provisions of the bill. Also, most franchises granted prior to 1978 or 1979 have no "material terms" and therefore offer no standard for measurements. S. 66 does not define "material terms." Thus, the requirement has no value.

Second, the franchise must be renewed if there has been "no material change" in the operator's qualifications "that would substantially impair the continued provision of service." We have no trouble with that measurement. But the third poses real problems.

It says the services and facilities offered by the operator are to be "reasonable" in light of a number of factors, such as the age of the existing system, construction and operation costs, are availability of similar services or facilities in cities of a similar size. This requirement is meaningless because of the unenforceability of service and facility requirements. Section 607 says we cannot require the very things section 609 says we should measure in granting a renewal. Which it is? If we can't require it and it is not there, how can we make sure it *is* there so we can measure it? If local government is prohibited from including basic service standards in a franchise, then we will have no way of measuring performance and section 609 becomes a meaningless waste of time.

Clearly, section 609 is likely to establish a virtual guaranteed right of renewal for existing cable operators, further compounding the problems created by Section 607's elimination of service and facility requirements.

The second blow to the public interest: A city would be prohibited from enforcing freely negotiated contracts. S. 66 explicitly invalidates countless provisions of freely negotiated franchise agreements. Under Section 4, any franchise agreement already in effect must be brought into compliance with the bill's requirements within 90 days of its passage. This abrogation of contracts by the Federal Government may be unprecedented in scope.

In a number of areas, such as rate regulation, service and facility requirements, franchise fees, access set asides, the bill requires changes which are so substantial that existing franchise agreements may have to be considered void under contract law. The problems resulting from the retroactive application of the bill are further compounded by section 2(b). This section nullifies any franchise agreement, or state or local law, if those local statutes deal with any of the items designated by S. 66 as a matter of federal concern. Since such fundamentally local concerns as rate regulation, access set asides, franchise fees, service and facility requirements, and franchise renewals are declared to be federal matters under this bill, virtually all essential franchise requirements would be nullified on the date this bill is passes. Franchise agreements would be meaningless.

In many communities, franchise agreements have been carefully worked out over a number of years to meet local concerns. We cannot understand why no effort was made to preserve those agreements which are contractual in nature. You are saying in S. 66 that one side does not have to meet the contract terms.

A third major point: Cities would have no real authority under the bill to protect the interest of consumers. In addition to prohibiting service and facility requrements, the bill eliminates virtually all meaningful rate regulation. Under current law, cities have authority to regulate rates charged to subscribers for the reception of basic service. This usually includes all one-way video programing except for optional pay services such as home box office, and includes installation and converter rental fees, as well as a number of other connection-related charges. These rates and fees are regulated in order to ensure that consumers revive a minimum level of service at reasonable rates.

Under section 607(a), only the rates charged to subscribers for the reception of federally required access programing could be subject to rate regulation. In limited circumstances (apparently when the reception of conventional television is poor), a city could also regulate rates for basic service, which is narrowly defined as the retransmission of broadcast programing. This apparently means that the majority of the cities in our country where, as we know, broadcast programing can be received over the air from at least three conventional stations, the Federal Communications Commission (FCC) must take action to prohibit the regulation of rates for basic service. The net result of all of this is that rates for basic service can be subject to rate regulation only in rural or other areas which are not adequately served by conventional television.

If S. 66 were to become law, cities could no longer guarantee that consumers have the equipment necessary to receive a minimum level of service at reasonable rates. Without authority to regulate the fees for converter rentals and installation charges, along with basic service, cities are powerless to make certain the rates for customer connection to the monopoly cable wire are reasonable.

Our fourth major point of concern: A city would have no authority to protect the interests of system users such as programers and service providers. Section 606 sets unacceptably low maximum standards for public, educational and governmental access and even establishes a mechanism for the eventual elimination of these minimal access set asides. Of even greater concern is the bill's effective prohibition of access set asides for third party access such as a service provider or programer who is not controlled and selected by the cable operator.

Section 606 authorized the set asides of system capacity for the provision of one-way video programing by public, educational, and governmental programers. But only ten percent of system channels can be set aside and in no event can any channels be set aside on systems with fewer than twenty channels. System capacity cannot be set aside for the provision of two-way services by public, educational or governmental users. Why not? Finally, the use and construction of institutional networks primarily for governmental and educational institutions is effectively prohibited by the ten percent cap on access set asides. (This occurs because institutional networks frequently connect only public institutions and 100 percent of their capacity is effectively set aside for access purposes.)

Even if we did set aside channels for public use, the FCC would be required to eliminate these minimal access set asides whenever there are a minimum number of outlets for the distribution of programing in a community. Yet there is no indication of how this system would work.

In addition to strictly limiting the set aside of system capacity for public purposes, the bill completely prohibits the set aside of system capacity for use by third party users. We believe that local government should have authority to ensure access to cable system facilities for third party programers not affiliated with the cable owner and that such access be provided on a fair and equitable basis. Allowing the cable operator to have exclusive control of this important communications pipeline is likely to prevent the development of a fully competitive marketplace for the distribution of communications services.

And fifth: A city cannot recover compensation from a cable operator for the value of the use of the public rights-of-way. Section 6008(a) requires the FCC to establish a single nation-wide cap on franchise fees based on its estimate of the average cost of regulation. Since the bill allows for almost no regulation, this provision could result in the establishment of a franchise fee of less than one or two percent. Under current practices, the FCC has set a ceiling of three percent, but allows for up to five percent as long as the additional revenues are used to implement the city's regulatory program. Repeal of this cap, which as you know is not based on statutory authority, is now under consideration in an FCC rule-making proceeding.

In other areas ranging from utilities to railroads, franchise fees are treated as compensation to the franchising authority for use of the public rights-of-way by the franchisee. The authority of cities to impose such fees on other franchisees (e.g., electric utilities and telephone companies) is not limited under Federal law in any other area. Federal law should not prohibit cities from receiving reasonable compensation from cable operators for use of the public right-of-way.

IV. CONCLUSION

In conclusion, S. 66 does not represent a balanced and fair approach to national cable policy and should be rejected by this committee. The bill takes the wrong approach in every area of vital concern to cities and consumers.

National cable policy must provide cities with specific authority in each of the following areas: (1) the ability to establish service and facility requirements by negotiation; (2) the right to establish a fully competitive refranchising process; (3) the right to ensure the set aside of sufficient capacity for public, educational, and governmental use; (4) authority to require the set aside of sufficient capacity for third party use and to establish the requisite regulatory requirements; (5) authority to regulate rates charged to consumers for basic services which are defined by the local franchise agreement; (6) the right to recover reasonable compensation for use of the public rights-of-way by a cable operator; and (7) the right to enforce existing contracts. S. 66, because it does not provide cities with sufficient authority in any of these areas, is not acceptable to either local government or the public it represents.

Thank you.

Senator **GOLDWATER**. Thank you very much, Mr. Greif. Mr. Chairman, would you like to ask some questions?

The **CHAIRMAN**. Yes. Mr. Greif, your presumption of the right of the cities to regulate is based solely upon the right-of-way concept, isn't it?

Mr. **GREIF**. That is correct.

The **CHAIRMAN**. And you would make no contention that you would have the right to regulate if they do not use the right of way?

Mr. **GREIF**. That is correct.

The **CHAIRMAN**. So that as we continue on with direct broadcast satellites and others—and I am convinced they are coming and the price is coming down—cable is going to be faced with legitimate competition. In fact, they are being faced with it now, although highly priced, but it will come down, and the competition will go on.

Mr. **GREIF**. The future may bring competition for the services that are provided over cable. What I was attempting to point out was that in our view, you must examine two things; the services that are provided over cable, and there, in fact, may be competition for some of those services, and the delivery system itself which stands alone. There is no competition for it. DBS will not have the same capabilities, the same broad band approach.

The **CHAIRMAN**. Mr. Wheeler, let me ask you this. As I recall, Boston has just let its cable franchise, and as I recall, it is going to cost, what, $350 million estimated to wire Boston?

Mr. **WHEELER**. Yes, sir.

The **CHAIRMAN**. My hunch is by the time it is done, if it is done, that is less than it will cost—just on the presumption that things cost more.

Mr. Greif, I will make you a bet. I will bet you Boston is never wired. That the amount of money that it is now going to cost to wire it—and as I understand the franchise, it is not particularly an unfair franchise; it is just the cost of putting it in. And that cable in that town will be overcome by the optic fiber, as far as two-way carriage of any kind of communications is concerned and via satellite, as far as one-way home entertainment is concerned. I think cable has a limited life. You may or may not agree with that.

But Mr. Wheeler is a young enough man that I am not sure he is always going to have the present job he has, if I guess right where cable is eventually going to end up. Do you think that because of the right-of-way concept—and, therefore, the right to franchise—it gives the city an unlimited right to impose any kind of condition it wants?

Mr. **Greif**. No. But when we talk about the tie to the use of the public right-of-way——

The **Chairman**. The what?

Mr. **Greif**. The tie. The reason cities franchise is because of the public right-of-way, and part of that is looking out for the public safety and welfare.

If the scenario you have just spelled out is correct, and in fact Boston or any other large metropolitan city is not totally wired, what we could have is a situation in which a cable company would come to a community, wire only the wealthy part of the community, sit for a while and say 5 years later; "now that there is all this competition we never are going to wire that poor part of the community." What you would have is electronic economic redlining, and you would have a very large section of the community that never receives cable service.

If, in fact, cable turns out to be one of the primary ways the information society develops for reaching into the home, and a segment of our society is left out—and I do not think such an exclusion is an appropriate policy to take—and if cities do not have the capability of writing into a franchise a requirement that a company wire the entire community, then some people may never get service.

The **Chairman**. Well, let me come back to my question again. Are there some things that the cities should not be allowed to require as a quid pro quo for the franchise?

Mr. **Greif**. Such as?

The **Chairman**. I am asking you. Is there anything the city should be prohibited from requiring?

Mr. **Greif**. I would assume so.

The **Chairman**. If so, how should they be prohibited?

Mr. **Greif**. I have never stated that there should not be some sort of Federal standard, and as Tom mentioned, we have been discussing that for quite some time. If there are specific areas in which cities should be held back, then it should be through Federal law.

The **Chairman**. Should the cities be allowed to require infinitely more than the cost of regulating a franchise?

Mr. **Greif**. Do you mean a franchise fee?

The **Chairman**. Yes.

Mr. **Greif**. In all other matters where cities levy fees for use of the public right-of-way, as far as I know, there is no Federal limitation. If you view the franchise fee as a fee paid to a city for the use of its rights-of-way, then I do not think there should be a Federal limit.

The **Chairman**. And there should not be any limit on the size of the franchise fee, whether or not it bears any conceivable relation to the use of the right-of-way regulating the franchisee?

Mr. **Greif**. No, I think that is something that belongs at the local level.

The **Chairman**. So the city can use the income from the franchise for any purpose they want, unrelated or otherwise?

Mr. **Greif**. Correct.

The **Chairman**. No other questions right now, Mr. Chairman.

Senator **Goldwater**. Senator Gorton?

Senator **Gorton**. I will pass for now, Mr. Chairman.

Senator **Goldwater**. Senator Pressler?

Senator **Pressler**. I have some questions that I would like to ask. Thank you very much.

The National League of Cities argues that cable is a common carrier, uniquely capable of providing a wide range of communications services. The cable industry, on the other hand, argues that cable is not a common carrier. If this is so, how do we insure that cable service will be available across the country and not simply in profitable communities?

I have already seen this problem in transportation deregulation where service is not always available to all who need or want it, and I am worried about S. 66, very frankly from my point of view and my State's point of view, and I am just very concerned about this. But how does S. 66 address that problem, especially for rural Americans? And I will address that to Mr. Wheeler, first.

Mr. **Wheeler**. Senator Pressler, your question really ties into one of the things that Frank just talked about in response to Senator Packwood's question. That was the statement that Frank made that cities need to require cable operators to do specific things; otherwise, they will not be done. Such as serving poorer areas of the community.

The problem is there is an anomaly in that approach which hurts. It ends up hurting the rural areas, more expensive areas to build, poorer areas, et cetera. That is, the city is building in costs which are very difficult to recover in terms of giving away capacity, in terms of giving away 5 percent of your gross revenues, in terms of having to bear competitive burdens that your competitors do not have to pay.

And those extra costs put the cable operator in a position where he is then given a disincentive to wire rural areas; a disincentive to wire poor areas because of the fact that the gold-plated system is made by government fiat to be uncompetitive with other services which can serve rural and poorer areas. And that is the kind of trap we find ourselves in.

Senator **Pressler**. What other services, for example?

Mr. **Wheeler**. MDS, STV, low power TV, DBS.

Senator **Pressler**. Now, this is not cable TV. They do not have the kind of programing and the availability of services. Of course, cable some day might get into telephone.

Mr. **Wheeler**. Senator, these alternative services do in many cases equal cable and in most cases will have more. You have to understand what cable subscribers buy. The cities tell us we have to build the 50- to 100-channel system, but the cable consumers do not buy 50 to 100 channels. All of our studies show that the cable consumers buy 4 to 6 channels. And what we are talking about when we refer to these competitive services are services that offer 4, 6, 8 channels either individually or in aggregate. And so there is significant competition out there, and the problem is that by shackling us with competitive disadvantages that the others do not have to bear, you give us a disincentive to serve the very kinds of areas that I think you and Frank want to serve.

Senator **Pressler**. Do you have a response to that, Mr. Greif?

Mr. **Greif**. Yes, I do. I would agree with Mr. Wheeler that you have touched a very important point. The impact of the bill is such that a municipality that is rural in nature; that is, a very small community, will not be able to structure its cable franchising process or its franchise to meet its specific needs.

I think that what must be recognized is that each community has different needs, and that each local government must have the flexibility to go through the franchising process to meet those needs.

Mr. Wheeler's statement that because the cities, large cities, are demanding gold, the small cities, the rural parts of America will not be served presupposes that there are only one or two companies out there doing business. In fact, we know that there are many, many cable companies. You will hear later today from the representative of an association of very small cable operator who are out there serving the small, rural communities.

This bill removes from those rural communities the ability to attract those small companies to come in and do business.

Senator **Pressler**. How was that again? This bill removes what?

Mr. **Greif**. What the bill does is it says that city government cannot describe the kind of system that should be brought to the community, whether it is 36-channel or 52-channel, cannot require the company to wire the entire community, cannot require things that would bring to town a company that would answer the specific needs of that community.

Senator **Pressler**. Well, let me say that I think we are going to have to start thinking of cable more and more as a common carrier if we are going to get the job done. And I am thinking more and more that maybe we have been too easy on the cable companies here, because of the fact that the two places that I live, Washington, D.C., and Humbolt, S. Dak., neither have got cable, nor much prospect of getting it soon.

And I do not see a lot of—we are sort of developing two systems of information in this country; one for the affluent and another for the people who do not happen to be in the mainstream. And I just am very concerned.

Now, give me some specific provisions of S. 66 that—or what features would encourage the growth of cable service in rural communities. And by that I am talking about small towns like 450 people, and rural areas. What is in there that is going to help us?

Mr. **Wheeler**. In S. 66?

Senator **Pressler**. Yes.

Mr. **Wheeler**. One example is the provision that if there is adequate competition, that your rates are deregulated so that you can respond to the marketplace; also the provision that the cable operator will not be the collector of hidden taxes.

Senator **Pressler**. Now, wait a minute. How does this encourage the growth of cable service in rural communities? Be specific.

Mr. **Wheeler**. The cable operator, Senator Pressler, has to pay 5 percent of the gross revenue of a cable system; and many cities ask for more. Five percent of the gross in many instances is 40 percent of the net. Where is your incentive to build the system unless there is a limit on what the city can extort from you? What happens is that a city says you are going to pay us 5 percent of your gross, and then we are not going to allow you to adjust your rates. So what is the incentive to get in there? What is the incentive to build the cable system?

Senator **Pressler**. Well, has that happened? What cities have extorted from cable companies so far?

Mr. **Wheeler**. Let's start with Fairfax County, Va., which is asking 10 percent. Let's talk about Colorado Springs which asked for 36 percent, or Albuquerque which wanted 35 percent.

Senator **Pressler**. How much is Fairfax County getting?

Mr. **Wheeler**. Right now, fortunately because of the fact that there is a Federal limit at the FCC, which the League of Cities and others are trying to have removed, it can only get 5 percent. But they want the higher levels, and they have forced the operator to agree as a condition to getting the contract for the franchise that if the level is removed, if the League of Cities is successful, that it will immediately go up to 10 percent.

Senator **Pressler**. Now, of course, it sounds to me like cable wants the protection of a common carrier but it does not want to take the responsibilities.

Mr. **Wheeler**. Let's go to the common carrier issue for a second, Senator.

Senator **Pressler**. Like in Fairfax County they must have some arguments for wanting more, if they do. But I mean, I do not know anything about the profit levels and so forth, but that is a rich county. I mean, that is a county where the service is easy to provide and easy to collect, and I do not see these companies going out into these tough areas. I see them hesitating to get into difficult urban areas. I do not see them wiring towns of under 600 people.

Mr. **Wheeler**. Senator, we are adding 300,000 subscribers a month, nationwide. We are spending $2 billion this year to build new plant. We are expanding as fast as our bodies and the legitimate economic climate will allow us to.

But let's go to the common carrier issue for a second. The common carrier status is not a mandate to build. If cable were a common carrier, you could not say that Humbolt must be built, or that Washington D.C. must be built. The common carrier concept is that once somebody goes in there and invests his capital, risks his capital in order to build a system, that then the government comes in and says we are going to remove from you the right to decide how to use that system. It is not going to get the system built, in the first place. In fact, the threat of being declared a common carrier will discourage the construction of a cable system in the first place.

To go back to the Humbolt, S. Dak. kinds of situations, the biggest problem that systems in small communities face right now in building new cable systems and in refranchising existing cable systems is what is going on down the road in terms of what the bigger cities are requiring. The city council comes in, they get in the unenviable position of saying well, wait a minute, if Chicago has all those bells and whistles, why can't we—a town of 5,000—have those bells and whistles here? Despite the fact that they may be economically infeasible.

That discourages the construction of a cable system in places like Humbolt. If we could go in and know that there was a degree of certainty in terms of how much Humbolt was going to extract, what cable operators could do in terms of rates and changing rates and what Humbolt was going to require in terms of giving away capacity, Humbolt would be a much more attractive city.

The reason Washington, D.C. is not built is because of the fact that the city of Washington has continually made excessive demands on cable operators every time they come up with a scheme for wiring the city, including the demand just last year—we will not let a private operator build it; we will build it ourselves. That is why these cities are not built. It is not because we are not willing to go in there and risk our capitol. We are willing to spend $350 million in Boston or whatever it takes in Washington or whatever it takes in Humbolt if we will have the climate in which to make that kind of investment.

Senator PRESSLER. Well, I think we have done a lot to create that climate in the last 2 or 3 years, and my definition of a common carrier is one that takes some profitable areas and some unprofitable areas, and that is kind of how our national transportation system was built. And that is how a lot of our national things have been distributed in terms of taking the responsibility in areas that are not so profitable.

But in any event, I think I have covered my questions at this point, Mr. Chairman.

Senator GOLDWATER. Thank you. Senator Gorton?

Senator GORTON. Thank you, Mr. Chairman. Mr. Wheeler, do you consider cable technology to be the most efficient and cost-effective system for the provision of video services?

Mr. WHEELER. Sometimes yes and sometimes no, and I do not mean to be evasive. It depends upon a wide range of facts, conditions and circumstances.

Senator GORTON. Well, what other technologies are more efficient and cost-effective, and under what circumstances?

Mr. WHEELER. Well, for instance, in areas where you have a very low population density over-the-air delivery it may be more cost-effective than building a 50-channel capacity cable system.

Senator GORTON. Is that Senator Pressler's kinds of communities?

Mr. Wheeler. Yes. That is why we are talking about MDS, STV, DBS providing the kinds of services that cable systems can, and with which cable must, compete.

Senator Pressler: We do not have those services.

Mr. **Wheeler**. You will have them.

Senator **Gorton**. Tell me what percentage of the people in the United States would fall into that category? Could you give me a rough estimate as to what percentage of the people of the United States would fall into that category as against those who fall into the category in which cable technology is the most efficient and cost-effective?

Mr. **Wheeler**. No, I cannot because again, it varies back and forth.

Senator **Gorton**. It does have to do with density of population?

Mr. **Wheeler**. It has to do with density, it has to do with physical terrain, it has to do with things like if you have high buildings standing around that are blocking signals. It has to do with the other alternative services.

Senator **Gorton**. Let me back up to that. Do you mean to say that Manhattan or, for that matter, Boston might be an inefficient place to cable because of high buildings?

Mr. **Wheeler**. No, I am saying it may be more efficient to cable because of high buildings. But on the other hand, we have presented a study last year that drove stock prices down substantially which was done by Brown, Bortz & Coddingtom, which looked at Los Angeles, which ought to be a great market, and showed how the cable operators were losing business to the over-the-air subscription television services there. And in that case apparently, the over-the-air system in Los Angeles was a more efficient allocation of resources, at least in terms of what consumers wanted and were willing to pay for.

That is why I hedged on your question. I think it varies literally from market to market, Senator. It also varies according to what a city demands. A 12-channel cable system may be cost-effective in one city, while a 36 or 54 channel system is highly cost inefficient.

Senator **Gorton**. In the light of cable's high transmission capacity and planned two-way capability in at least many urban systems, how can DBS be viewed as real competition for cable in urban areas, especially where they are already cabled and the investment has already been made?

Mr. **Wheeler**. In many ways. The consumers, as I said before, do not buy 50 or 100 channels. All of the studies show that consumers are buying 4 to 6 extra channels. That is all that DBS or MDS——

Senator **Gorton**. By that, channels that they cannot receive over the airways?

Mr. **Wheeler**. Right. That is what STV, MDS, DBS, all of these other services are offering and going for, and that is the kind of channel capacity that they are talking about.

Senator **Gorton**. Mr. Greif, do you have any response to any of those questions? And I do have one for you.

Mr. **Greif**. Yes, I do. A statement that Mr. Wheeler just made was that competition varies from location to location. That is exactly my point. In the city of Los Angeles, STV or MDS may be able to provide one or two channels of a service that is also provided on cable, but in many other communities those services, for many different topographical or technological reasons, do not exist. And there is not competition for all of the services that run down that cable wire.

I think that is why it is imperative that local governments have the capability to respond to the kind of a situation where cable is, in fact, a monopoly.

Mr. **Wheeler**. But, Frank, one of the problems is that you are taking a snapshot of what exists on this date, in February 1983, and we are participating in a moving picture that is evolving rapidly over time; Even in those small communities you talk about.

There was a witness here yesterday from the Low-Power Television Association. There will be 2,000 low power licenses. They are coming out at a couple hundred a clip. Even in a city like Manhattan, Kans., Junction City, Kans., Hibbing, Minn., places like this are getting low power stations. And you know what those low power stations are doing? They are scrambling their signal and they are selling it in direct competition to the kinds of services that cable operators are offering. And so, the competition is there, even in those small cities.

Mr. **Greif**. And yet, as you speak of this motion picture and I speak of a snapshot, you have a propensity to look at a still frame of that motion picture, and that still frame is only the video services. We have to look at the whole, wide range of services that are developing. And I think it should be clearly understood that video 5 or 10 years from now, will not necessarily be the mainstay of cable.

And I think such a development is extremely important when we are talking about putting down the new infrastructure.

Mr. **Wheeler**. Frank, video is your best argument. The nonvideo services are the ones where there is so much competition, including from a small, struggling company called Ma Bell, as to make—by comparison—the competition in video services look nonexistent, even though there is significant competition in video services.

Mr. **Greif**. Well, Tom, we are meeting again tomorrow to argue back and forth across the table. We will continue it at that time.

Senator **Gorton**. Can a city obtain any income if its conditions are so onerous that a city is not cabled?

Mr. **Wheeler**. No, but a city can still obtain income if its conditions are so onerous that the cable owner cannot make a profit.

Senator **Gorton**. But nevertheless, wants to be in business.

Mr. **Wheeler**. And is trying to stay in business. We are talking about these negotiations. I had one of our major operators, who has just been granted some franchises and subsidiaries around the country, come up to me last week at our board meeting and say, in terms of franchise fees, promise the cities 100 percent of net profits for the first 7 years of the franchise. That is nothing. That is the problem. Yet, we still have to pay 5 percent of that gross, even though we are not earning a profit.

Senator, on that subject, let me give you some numbers. Our net return in the cable industry in 1982 was 3.7 percent of gross. That is how much net return we had. The franchise fee is almost equal to our entire net profits, at the 3 percent level. At the 5 percent level that the NLC is pushing to go to, franchise fees will exceed what we are making in profit, and it lowers our net return to 1.7 percent. Try to borrow capital in the money markets with a return like that!

How do you build Washington, D.C., Humbolt, S. Dak., places like this when you are running that kind of a business.

Senator **Gorton**. I suppose the steel industry would be happy to trade places with you. But nonetheless, those profits could be higher.

Frank, I want to ask you one parochial question, since you are from Seattle, but it may be a specific or a snapshot which could have general applicability. One of the arguments on the other side is that the marketplace for those communications services which are provided over cable systems is subject to competition. As a matter of fact, that is the central argument through which we are going right now. Could you describe the marketplace for those services in Seattle?

Particularly, I would like to know specifically what alternatives to cable the Seattle consumer has in terms of both price and availability of those alternatives?

Mr. **Greif**. Seattle has six over-the-air broadcast stations. The city itself is divided into five franchise districts, has two cable systems now operating in the city, and the city council late yesterday afternoon granted a franchise to yet another company. And we have one MDS operator. So it would appear that we have a wide range.

Seattle, not unlike Rome, is a city of seven hills. There are many parts of our community where the MDS operator cannot reach, where if people want to subscribe to MDS, they cannot because the microwave signal simply does not get there. There are many parts of our city, in fact, where none of those six over-the-air broadcast stations can be received because they are in shadowed areas.

For the people in those areas, if they want to watch television, pure and simple, cable is a must. Cable started in Seattle back in the late 1950s, or early 1960's, because it was the only way that people could really get television.

So I would say that in the city of Seattle, for perhaps only 35 to 45 percent of the population is MDS a viable opportunity. Perhaps to 60 to 70 percent if you are willing to put up with a real fuzzy picture, is over-the-air broadcast available and the rest are served by cable.

Senator **Gorton**. You have more than one cable franchise. Is there, or is there likely to be in the future, competition for the same streets by more than one cable company?

Mr. **Greif**. No.

Mr. **Wheeler**. Senator, could I pick up on that question?

Senator **Gorton**. Yes, of course.

Mr. **Wheeler**. The brilliance of Senator Goldwater's bill is that it takes into account the specific kind of situation that you and Frank were just discussing. It says that if there is not adequate competition, if you are blocked by the hills, if you cannot get the service, the only way to get it is by cable, then by golly, you ought to be regulated. Because there, there is an absence of a marketplace.

But S. 66 says if you are not in that situation, then just because it exists behind a hill in Seattle does not mean that regulation is justified in Columbus, Ohio where an entirely different reality exists.

And therefore, what the Goldwater bill does is says let's look and see if the market is competitive. If it is competitive, then let's let them compete. If it is not competitive, then let's go in and respond and treat that lack of competition accordingly. And that would address the situation in Seattle and all other unique situations like that.

Senator GORTON. Mr. Chairman, I would like to make one comment. That we have all not only been enlightened but entertained by the debate which we have had between these two gentlemen, who obviously are pretty close friends, in connection with the rivalry and the varying positions which they have set forth here.

I would like to congratulate them and the organizations they represent for the very sincere effort they have made to settle their differences or to cut down those differences which they are bringing to us for solution. And simply to say publicly that I would encourage them to continue to work in that direction. The passage of legislation and the interests of both of the groups they represent is likely to be—is more likely and will certainly be more prompt if they are able to do so.

They have done a good job on that so far, and I hope they continue to work together.

Senator GOLDWATER. Thank you. I think one of the most important things we learn as we go along is that you can learn to disagree in an agreeable way, and I do congratulate these two sides for trying to work this out.

Mr. Greif, you mentioned S. 66 has no protection, or maybe inadequate protection for the consumer. Could you specify one or two of those ways?

Mr. GREIF. I will go back to my opening statement, that when a municipality or local government, both cities and counties enter the franchising process, they are doing so as business agents for the public who gives up the use of its rights-of-way for services. In doing so, local government must look at the needs of the community and state; here are the things that need to be done to meet the needs of our community.

I will give you an example. In the city of Seattle in the franchising process that we have just gone through, the need is that the entire district that we just franchised be served because we want the entire city to be served. Because the area that we are just now franchising is primarily a low-income minority part of the city which was electronically redlined, we want to make sure that that system is of a standard at least equal to or better than that in the rest of the community.

The way we did that was in, writing our request for proposal, stating that we wanted the companies to show us how quickly they were going to do the system and to describe the quality of the system. We had seven companies bid. Under this bill we would be prohibited from requiring any specific kind of facility and any specific kind of program to meet community needs.

Senator GOLDWATER. Would that not be provided under your competition? You have seven companies. Would you purposely select a company that did not do all of these things?

Mr. GREIF. No, we would not, Senator. But what would happen if we selected a company that 6 months later decided it was not going to do everything it said it would do? We would have no way, short of revocation, of changing that situation.

Senator GOLDWATER. You can revocate.

Mr. WHEELER. Senator, if I may, they also have the other contract powers to enforce the contract: liquidated damages; compensatory damages; specific performance; revocation, which we discussed; all kinds of things like that to enforce that.

Senator GOLDWATER. Well, in order to get along, would you prepare a list of the inadequacies of S. 66?

Mr. GREIF. Senator, yes, I have listed five specific points making reference to specific sections. It is in my prepared text.

Senator GOLDWATER. Thank you. We will study those.

Mr. Wheeler, I do not know if you can give me this, but what is the average amount of money that a cable system pays per year to the local governments through the franchise fee?

Mr. WHEELER. Right now, it is about 2.4 percent of gross revenues. In 1982 it was roughly $148 million nationwide.

Senator GOLDWATER. Is there any way that would be applicable across the board for, say, a community of 500 or a community of 500,000?

Mr. WHEELER. That is an aggregate number.

Senator GOLDWATER. Now, we have been talking up here about common carriers. I think one of the biggest forms of competition that all communication services not only are going to have but they have it right now, is what I have always called the bare-wire. But now we are going to call it fiber optics.

Now, how is the local government going to handle fiber optics on a telephone when you cannot regulate the telephone industry? And do not think this is not serious. Ma Bell or whatever Ma Bell has sold itself into is almost offering now unlimited communication facilities, including catalogs, whole newspaper, news. So you are talking now about more regulation of cable. You will not even be able to regulate that particular facility.

Mr. GREIF. Senator, I am not proposing more regulation of cable. We have heard Mr. Wheeler mention in his testimony this morning that cable, the cable industry, is growing quite rapidly. We all know that. I do not think the regulatory structure that is in place now is retarding the growth of cable in the manner that the industry would have us believe.

But in answer to your very specific question about what happens when the Bell operating company lays down that wire; When that sort of thing happens and Bell is in fact providing similar services to all of those provided on cable, then maybe it is time to readdress the cable issue. I do not have an answer to that right now.

Senator GOLDWATER. But we have not done it.

Mr. GREIF. I know that.

Senator GOLDWATER. When you get fooling around with Ma Bell, you are not fooling around with peanuts.

Mr. GREIF. We are aware of that.

Senator GORTON. It is not Ma Bell anymore.

Senator GOLDWATER. Well, whatever you want to call it.

Mr. WHEELER. Senator, to go back to S.66, the secret of your bill is that it says, let us not come back to Congress again next week or next year or 5 years from now when it becomes crystal clear there is a problem.

Your bill says, let us create a mechanism that is flexible enough over time. We do not know what is going to happen, but we will create the flexibility to respond to it. That is the secret to your bill.

Senator **Goldwater**. Of course, everything we have introduced is based on the proposition that there should be no regulation. I do not like it any more than you do.

I would also add one thing, and I know this will interest my friend Senator Pressler. We discussed it yesterday. The day of satellite television is also with us. It is suggested that by 1986 the parabolic antenna, or the dish as we call it, plus the receiver in 1986 will probably be on the market for around $400, $300 or $400. And I look on that really, having played with some of it myself, as the provider of real competition to cable.

Now, I have questions here, but we have other witnesses, and in order to speed things up—well, let me ask one question because I think this bears more on the problem than probably anything going on. And both of you can discuss this. What impact do you think the lawsuit by the Mountain States Legal Foundation against the city of Denver, if successful, will have on the future of the cable industry?

Mr. **Wheeler**. Very significant. It will also have a significant impact on the cities, because what it says, if successful, is that the cities have no role at all, period, and that it is truly wide open. That will have a very major effect.

It also seems to me that what we ought to be trying to do in developing the national policy, Mr. Chairman, is to perhaps give the courts some kind of guidance during the pendency of the suit. And if Congress would act and say, look, court, here are the things that Congress has taken into consideration, this is where we think policy should be going, that is a much preferable approach compared with the court ad hocing it, if you will, on a limited-fact basis in one city in America and applying that across the board.

I would hope that one of the reasons why both the cities and the cable operators ought to be pushing for rapid enactment of this kind of a bill is to give that kind of congressional direction to the court.

Senator **Goldwater**. Mr. Greif, do you have any comments on that?

Mr. **Greif**. I agree with Mr. Wheeler that the impact if Mountain States were to win that suit, would be very significant. I think that the impact is already felt in the fact that the company that was awarded the franchise has already come back to the city of Denver and stated that because of the possibility that it faces direct competition from another cable company, it must reduce its proposal to the city. In fact the bank is saying to the company that it is going to reduce the amount of money the bank will loan cable. Why are they saying that? Because in fact in Denver the company may face true competition, but only in Denver.

I think that only if the case goes all the way through and is won by Mountain States will we see head-to-head competition for cable in the cities.

Senator **Goldwater**. Well, thank you very much.

Gentlemen, we thank you for this discussion. It has been an illuminating one in that we have gotten into a little bit of the argument between the cities and cable. But it has been a real pleasure to listen to the both of you. And I want to thank you on behalf of the committee for the fine testimony that you have given.

Mr. **Wheeler**. Thank you, Mr. Chairman.

Mr. **Greif**. Thank you, Mr. Chairman.

Senator **Goldwater**. Now I will ask the second panel, who will consist of the Honorable Jack Evans, the Mayor of the city of Dallas, Tex.; Mr. Stephen Effros, executive director of the Community Antenna Television Association, Fairfax, Va.; and Ms. Sue Miller-Buske, executive director of the National Federation of Local Cable Programers.

And the three of you will be allowed 10 minutes each. So if the lights act up, do not pay any attention to them. And I think we will start with Mayor Evans. It is a pleasure to have you, Mr. Mayor. You may proceed.

And by the way, if you have prepared statements and you want them printed in their entirety in the record, they will be in order that you might just generalize what you want to say.

STATEMENTS OF JACK W. EVANS, MAYOR, CITY OF DALLAS, TEX.; STEPHEN R. EFFROS, EXECUTIVE DIRECTOR, COMMUNITY ANTENNA TELEVISION ASSOCIATION; AND SUE MILLER-BUSKE, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF LOCAL CABLE PROGRAMERS

Mr. **Evans**. Thank you, Mr. Chairman. I appreciate very much the opportunity to appear before you on behalf of the Conference of Mayors relative to S. 66. I would like to say beginning at the outset we know that some cities have some major concerns with cable companies.

However, generally speaking, we do not have the concern that was shared by the previous panel other than the National League of Cities, which we are very supportive of their position. I would also like to recommend that the Conference of Mayors do the same thing as far as negotiating and working with you to help us resolve this question.

I have a prepared statement that has been given to you. I have the letters from other mayors from other parts of the country that I have submitted for the record.

Senator **Goldwater**. They will be printed also.

Mr. **Evans**. And I would just like to give you an overview of what we consider issues that are of major concern to our cities. Few issues arouse as much concern and intense interest on the part of cities as does cable television. The Conference of Mayors has consulted widely with mayors across the country on the key provisions of S. 66.

The relationship between city governments and cable television is never an easy one. But on balance, it has worked well. The franchising process is a model of the free enterprise system working well. Competition certainly is the driving force, as we all know. Local government oversight ensures the greatest possible implementation of contract provisions following the franchise award. And I think that is paramount.

Cities have several central concerns with this bill. These include concerns that, one, to narrowly define basic service rather than permitting that definition be negotiated between the two parties, access channels are given a ceiling which is lifted at the discretion of the operator rather than through negotiations.

One-way cable programing except access and basic would be exempt from regulation. The FCC is provided too dominant a role. Retroactivity provisions may declare null and void contract elements already in force. Franchise renewals would be subject to a set of Federal criteria, shifting the burden of proof to cities that a company should not be renewed. And franchise fees would be regulated although there is no evidence of abuse.

The overriding concern of cities is that the progress that the cities have made the reality of working cable service in urban America not be threatened by preemptive laws and regulations which seek solutions to problems which do not exist. Mayors voted unanimously during the Conference of Mayors at the 50th annual conference that legislation embodied in S. 66 was not necessary. And let me be first to say to you today that the Conference of Mayors, many issues I do not agree as the mayor of the city of Dallas, and also representing other mayors of cities likewise. We do have some differences, as all the National League of Cities have as well.

However, with this issue we are unanimous. But we want you to know that we do want to negotiate. We do want to be cooperative. But we do oppose the bill as it is written currently.

[The statement follows:]

STATEMENT OF HON. JACK W. EVANS, MAYOR OF DALLAS

Mr. Chairman, and Members of the Subcommittee, my name is Jack W. Evans, Mayor of the City of Dallas. I am here this morning on behalf of the U.S. Conference of Mayors which is composed of the nation's principal cities.

It is a pleasure to provide this Subcommittee with the views of Mayors on Cable television legislation. As this Subcommittee knows, few issues arouse as much concern and intense interest on the part of Mayors.

The Conference of Mayors has consulted widely in the last three weeks with Mayors across the country on the various provisions of Senate Bill 66, the Cable Telecommunications Act of 1983. Our concerns in summary form follow. In addition, my colleagues, Mayors Whitmire, McClellan, and Cisneros of Houston, Austin and San Antonio, Texas, have asked me to personally express their opposition to Senate Bill 66.

CABLE TELEVISION AND THE CITIES TODAY

Mr. Chairman, the relationship between cable television and local governments is never an easy one. But on balance, the relationship works well. The wiring of urban America is occurring, and at a rapid pace.

The Franchising process, for example, is a model of the free enterprise system working feverishly. In this instance, local governments, acting as the customer, describe and define the qualities and specifications they seek in the product, the cable television system. The private cable companies then compete for the franchise. Not only do they seek to meet the terms set by the local government, but also, as part of the competitive process, they almost always seek to exceed them. Through this procedure, the marketplace ensures the best possible cable television system which can be sustained by the jurisdiction.

Following the award of the franchise, local government oversight acts to gurarantee effective implementation of the franchise agreement. the local government oversight role helps to ensure that the public interest is upheld.

It is in this context in which our comments regarding S. 66 are based. The system is working. It is not perfect. But, we at the local level have the capacity to iron out the disagreements which may occur from time to time.

S. 66 AND THE CITIES

Mr. Chairman, S. 66 raises key concerns for most cities.

Regulation of Basic Service.—S. 66 permits local governments to regulate the rates for "basic service" but limits the definition of basic service to "the retransimission of braodcast signals." Additionally, the Federal Communications Commission would be given the authority to set-aside the regulation of basic service if reasonably available alternatives are found. Basic service should be defined by a process of negotiation between the city and cable company, and be subject to rate regulation if that is determined in the franchising process. Moreover, the Commission should not be able to ultimately waive the regulation of basic service if it deems there are reasonably available alternatives.

Access Channels.—S. 66 calls for those systems having 20 or more channels to dedicate 10 percent of those channels for access by educational, governmental, or public programers. While this may be reasonable for some communities, it should be viewed as a minimum to ensure adequate access to the system from a wide variety of programers. More access channels may be determined feasible and desirable through the city/cable company negotiation process, but should not be at the sole discretion of the company as S. 66 specifies.

The Federal Communications Commission is permitted to waive the access channel requirements if it deems that there are reasonably available alternatives, also the operator can fold together the access channels if it considers there to be insufficient demand for all allocated. This seems to throw into potential jeopardy the status of access channel provisions, placing their future in arbitrary terms.

Cable Services.—Under the provisions of S. 66, all one-way cable programing except basic service and access programs would be completely exempt from any regulation whatsoever, including the Commission. Currently, this category of services includes the most appealing of program offering. At the present time, pay cable services already are exempt.

This legislation extends the exemption to nonpay services. Thus, the cable operator would have complete control and discretion over one-way cable service offerings including leased channels employed for one-way programs.

Telecommunications Services.—Like cable service (one-way cable programing), all two-way cable services would be exempt from regulation by any governmental agency at any level. Transmission of data, security services and facilities used to provide these services would be exempt from regulation. At the same time, telephone service would not be exempt from regulation. We are concerned that such exemptions would permit cable operators to avoid offering or developing new, innovative services.

FCC Dominance.—Although the grants of authority to local governments for basic service regulation, municipal ownership, and access channels are provided for, Mayors are still troubled by the dominance and looming presence of the Federal Communications Commission in cable TV regulation, as would be the case under S. 66 to the extent that regulation is not precluded altogether. In an era of deregulation, when the Commission is trimming its sails with respect to a great deal of its mandate, it is perplexing to us that it now be granted exclusive jurisdiction over cable, except where specifically given to other entities or prohibited entirely. It seems appropriate that the reverse should be the case: if the Congress has specific missions for the FCC, those should be prescribed instead of a relatively random, broadsweeping license to regulate.

Retroactivity.—As the Mayor of a city which has a cable franchise in operation, I am concerned that S. 66 grants powers to the FCC which would retroactively declare null and void important provisions of existing franchise agreements if they are in conflict with the provisions of this legislation. That seems excessive to local officials, and is bound to create considerable turmoil. For example, many franchises include performance standards, system design specifications, and construction timetables. S. 66 would excuse cable operators from these promises.

Franchise Renewal.—S. 66 prescribes a federal context, rule and guidelines on franchise renewals which seeks to suggest that the existing company shall have the right to renewal unless the city proves that a certain set of conditions are not met. This would be a shift of the burden of proof from the franchisee to the cities. This is contrary to the city view that following the expiration of a franchise, all competitors should be given a fair and equal opportunity to compete for the franchise. If passed, this provision would almost certainly lead to excessive legal wrangling during franchise renewals.

Franchise Fees.—There is no evidence of intent by local governments to abuse the power to collect franchise fees. Yet S. 66 mandates that the Commission set a ceiling limited to the cost of regulation. A franchise fee is not only to cover regulatory costs and the costs of municipal programing, but is also compensation to the public for the use of public rights-of-way.

In summary, these are just a few of the points which cause local officials great concern. Our overriding desire is that the progress we have made, the reality of the working cable service in urban America, not be threatened by preemptive laws and regulations, and by solutions which seek to meet problems which do not exist.

TOWARD THE FUTURE

Mr. Chairman, as the Subcommittee considers its options for the future, the Conference of Mayors is hopeful that real consideration will be given to our view that this legislation is unnecessary. This was the unanimous view taken by Mayors during our 50th Annual Conference in June. A copy of the supporting policy is attached.

The Conference of Mayors appreciates the opportunity to meet with you this morning, and thanks you again for your courtesy and sense of fairness in seeking our views.

We would be pleased to take any questions the Subcommittee might have.

RESOLUTIONS ADOPTED—FIFTIETH ANNUAL CONFERENCE, MINNEAPOLIS/SAINT PAUL, MINN., JUNE 19–23, 1982

CABLE TELEVISION REGULATION

Whereas, cable television provides a medium for community communications which significantly increases the availability of channels dedicated solely for local use and distribution of information of local public interest; and

Whereas, franchising of cable television systems has traditionally been a responsibility of local government; and

Whereas, this franchising has been based on intense competition among cable companies, and vigorous negotiations between the cable companies and the cities; and

Whereas, this negotiation and competition has resulted in considerable progress in making cable television available to the nation's cities; and

Whereas, cable television functions as an effective monopoly where it is franchised and will do so for the foreseeable future; and

Whereas, the various regulatory and oversight responsibilities of local government, established through the franchising process, are essential to the protection of the public interest; and

Whereas, there are currently proposals pending before the Congress which would restrict local governments' ability to exercise its normal responsibilities with respect to cable television; and

Whereas, this preemption of local government functions has been vigorously opposed by the nation's Mayors; and

Whereas, enactment of such proposals would certainly erode the ability of local governments to protect the public interest in both existing and proposed franchises for cable television; and

Whereas, it is essential to the protection of the public safety for local governments to exercise control over municipal security and utility systems carried on cable, and

Whereas, there are currently proposals pending before the Congress that would prohibit local governments' right to own or be a partner in a local cable system, Now, therefore, be it

Resolved, That the U.S. Conference of Mayors continue to oppose cable television legislation which would unnecessarily curtail the right of local governments to exercise their responsibilities to oversee the implementation of cable television franchises; and be it further

Resolved, that the U.S. Conference of Mayors affirms that competition among cable television companies and negotiation between the companies and local governments, without federal intrusion, continues to be the surest way to protect the interests of all concerned and affected by cable television.

Senator **Goldwater**. I was just asking my staff if you have provided us with a reason for your objections.

Mr. **Evans**. I have.

Senator **Goldwater**. Thank you. And I can promise you they will be considered.

All right, I think I will take it down the line. Ms. Buske.

Ms. **Buske**. Thank you, Mr. Chairman. I am the executive director of the National Federation of Local Cable Programers. The NFLCP is a nonprofit national organization whose members represent a broad cross section of the users of cable technology. That includes community groups, educators, librarians, city governments, church groups, cable companies, and access users as well as subscribers to cable systems.

Cable communication systems will pass 82 million American homes by 1990. Thus, the potential impact of cable technology on society in this country is staggering. For many years, cable television was considered simply a retransmitter of existing over-the-air television, a way for those who lived in areas where over-the-air television signals were poor to receive television. But, with the development and availability of domestic satellites, cable became known for its uninterrupted movies and sporting events.

The development of 400 megahertz technology and the ability to use the upstream capabilities of cable systems has moved us to a point where we are no longer talking about cable television systems but rather we are talking about cable communications systems. Modern cable systems, as I am sure you well know, are capable of delivering fire and medical alarm and alert services, data transmission, traffic signalization, home shopping and banking, access programing, and the anticipated general television fare.

At one time, the public would have simply related to cable as just better reception or uninterrupted movies. But that is changing. The level of sophistication about cable is growing rapidly. The public and the entities that serve the public, such as libraries, human service agencies, schools, are aware of the potential impact of effective utilization of this truly community communication system. At their conferences and conventions you see not only just one workshop but whole days of workshops on cable communication.

I am most concerned, as I review the list of the people who have been allowed to testify in this hearing process, at the lack of input from representatives of those who will be most directly affected by the decisions of this body, the American public. Where are the voices of the libraries, the educators, the churches? I know that a number of these groups requested the opportunity to speak, but were denied.

During the 2 days of this hearing process, you have heard the wonders of the marketplace from the operators, sellers, and manufacturers of new technologies. And, today you have heard two representatives of the cable industry and two representatives of local government and myself representing the members of the NFLCP. Now, please, do not consider my concerns a personal attack on any individual, but rather an expression of deep concern regarding the imbalanced hearing process of S. 66.

As one examines the history of major communications legislation, the process surrounding S. 66 is unprecedented in its lack of in-depth study, open hearing process, and input from the public or entities servicing the public.

The Radio Act of 1927, which was embodied as title III of the Communications Act of 1934, was impacted by four separate national conferences between 1922 and 1925. These studies and hearings examined the impact of such legislation on society. Before the Public Broadcasting Act of 1967 was adopted, several years of in-depth study were undertaken by a disinterested third party, the Carnegie Commission, to examine the impact of the act on society.

We recommend that the process surrounding cable legislation be slowed down and that an in-depth study and a broad regional hearing process be undertaken.

Now I would like to examine several key sections of S. 66, the Cable Telecommunications Act of 1983. As I reflect on my 10 years of experience in cable television as an employee of a major multiple-system cable operator, a cable television officer for cities, a director of access programing, and a cable franchising consultant, I find a number of areas of concern.

For instance, S. 66 gives the cable operator nearly automatic franchise renewal. Now let me reflect on one recent renewal process completed in Dubuque, Iowa. Dubuque, a city which has been served by cable since 1954, has an 85-percent subscriber penetration base. This system is considered one of the "cash cows" of the cable industry because it has been highly profitable for many years.

Several years ago this city and the cable company entered into a renewal negotiation process. If the S. 66 legislation had been in place at that time, the cable company could have met the minimal requirements in this bill and continued to provide the 12-channel service it has provided for years. But, instead, a robust bargaining process evolved, a process driven by the knowledge from the city perspective that the system could economically support more and better services to the subscriber and by the knowledge from the existing cable companies' perspective that if they did not reasonably negotiate it could result in the city seeking out other cable companies as bidders, and thus a loss of potential millions of dollars of revenue for the future.

The results of this bargaining process were more and better services for the subscribers and the ability for the existing operator to service this community for another 15 years and reap even more profits.

The existing procedures for renewals and renegotiations are working and are driven by marketplace competition. The ramifications of the renewal language of S. 66, rather than being competitive are anticompetitive.

Let us examine another aspect of S. 66 in light of the Dubuque scenario. S. 66 states that the Federal Government will have exclusive jurisdiction over matters dealt with or otherwise within the purview of the bill. The bill states that there is a 10-percent ceiling on the number of public, educational, and governmental access channels which a city can request. It also states that this access language only applies to systems with 20 or more channels. And it does state that the cable company can freely offer more channels.

However, since this area would clearly fall under the purview of the bill, the city would not have any enforcement capability specific to those channels that might be freely offered. As we look at the Dubuque situation, remembering that it was a 12-channel system, the city, No. 1 could not have negotiated for access channels or required access channels. And further, if the company had freely offered the channels, the city would still have no ability to hold the company to its offering, since this clearly comes under the purview of this bill and it is under Federal jurisdiction.

Again, this points to the problems in the bill. In short, we believe that S. 66 is, at best, an oversimplistic handling of where lines should be drawn between Federal and local authority. It reflects a serious lack of understanding of the realities of cable communication systems and their future impact on society.

We, the National Federation of Local Cable Programers, believe that the cable operator deserves a reasonable rate of return on investment. But, we also believe that the cable subscriber deserves state-of-the-art cable services and access to that system.

The bill, in its findings section, clearly places the resources and authority inherent in Federal policy squarely on the side of the cable industry. It contravenes the public-interest standard that has been the basis of regulation of telecommunications for over 50 years.

The cable industry is growing, but it is still young. It is important that cable legislation allow sufficient responsiveness for flux as cable matures. Federal minimum standards which support the concept of the new federalism and local contractual controls as well as meaningful public participation, will provide the necessary balance and flexibility to support the optimal expansion of cable over the long term. Thank you.

[The statement follows:]

STATEMENT OF SUSAN BUSKE, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF LOCAL CABLE PROGRAMERS

Mr. Chairman, I am the executive director of the National Federation of Local Cable Programers. The NFLCP is a national nonprofit organization whose members represent a broad cross section of users of cable technology. This include community groups, educators, libraries, city governments, church groups, cable companies, access users and subscribers to cable systems.

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At one time the public would have simply related to cable as better television reception or uninterrupted movies. However, the level of sophistication about cable is growing rapidly. The public and entities that serve the public such as libraries, schools, human service agencies and church are aware of the potential impact of effective utilization of this community communication systems. At their conferences and conventions you see not only one workshop but you see sometimes an entire day of workshops on the subject of cable communications.

I am most concerned as I review the list of those who have been allowed to testify in this hearing process at the lack of input from representatives of those who will be most affected by the decisions this body—the American public. Where are these voices: the churches, libraries, educators? I know that a number of these groups requested the opportunity to speak—but were denied. During the two days of this hearing process you have heard the wonders of the marketplace from operaters, sellers, and manufacturers of new technologies and today you hear from the two representatives of the cable industry and two representatives of local government and myself representing the members of NFLCP. Please do not consider my concerns as a personal attack on any individual but rather an expression of deep concern with the imbalanced hearing process of s. 66.

As on examines the history of major communication legislation the process surrounding S. 66 is umprecendented in its lack of indepth study, open hearing process and input from the public or entities representing the public. The Radio Act of 1927 which was embodied as Title 3 of the Communications Act of 1934 was impacted by four national conferences between 1922-1925. These studies and hearing examined the impact of such legislation on society. Before the Public Broadcasting Act of 1967 was adopted, several of indepth study were undertaken by a disinterested third party—the Carnegie Commission to examine the impact of the Act on society.

We recommend that the process surrounding cable legislation be slowed down and that indepth study and a broad regional hearing process be undertaken.

S. 66

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For instance S. 66 gives the cable operator nearly automatic franchise renewal. Let me reflect on one renewal process recently completed in Dubuque, Ia.

Dubuque, a city which has been served by cable since 1954, has an 85 percent subscriber penetration. This system considered one of the "cash cows" of the cable industry has been highly profitable for the cable operator. Several years ago the city and the cable company entered into a renewal negotiation. If the S. 66 legislation had been in place the cable company could have met the minimal requirements in this bill and continued to provide the 12-channel service it had provided for years. But instead a robust bargaining process evolved. A process driven by the knowledge from the city perspective that the system could economically support more and better services to the subscriber and by the knowledge from the existing cable company's perspective that if they did not reasonably negotiate it could result in the city seeking out other cable companies as bidders. Thus loss of millions of dollars per year of revenue. The result of this bargaining process were more and better cable services to subscribers and the ability for the existing operator to service this community for another 15 years and reap ever more profits. These existing procedures for renewals and renegotiations are working and are driven by marketplace competition. The ramification of the renewal language of S. 66 rather than being competitive are anticompetitive.

Let us examine another aspect of S. 66 in light of the Dubuque scenario. Senate bill 66 states that the federal government will have exclusive jurisdiction over matters dealt with or otherwise within the purview of the bill. The bill also places a 10 percent ceiling on the number of public, educational, and governmental access channels which a city can request. It also states that the language only applies to systems with 20 or more channels and states that a cable company may freely offer more channels. However, since this area would clearly fall under the purview of the bill the city would not have any enforcement capabilities specific to those channels freely offered. As we look at the Dubuque situation (remembering that it was as 12-channel system) the city could not have negotiated for access channels further if the company had freely offered channels the city would have had no ability to hold the company to its offering. Again this points to the highly anticompetitive nature of this bill.

In short we believe S. 66 at best is an overly simplistic handling of where lines should be drawn between federal and local authority. It reflects a serious lack of understanding of the realities of cable communications systems and their future impact on society. We, the N.F.L.C.P., believe that the cable operator deserves a reasonable rate of return on their investment but we also believe that the cable subscriber deserves state-of-the-art cable services and access to that system. This bill in its finding section clearly places the resources and authority inherent in federal policy squarely on the side of the cable industry. It contravenes the public interest standard that has been the basis of federal regulation of telecommunications for over 50 years.

The cable industry is growing rapidly but it is still young. It is important that cable legislation allow sufficient responsiveness for flex as cable matures. Federal minimum standards (which support the concept of "new federalism") and local contractural controls as well as meaningful public participation will provide the necessary balance and flexibility to support the optimal expansion of cable over the long term.

Senator GOLDWATER. Thank you. Now we have Mr. Stephen Effros.

Mr. EFFROS. Thank you, Mr. Chairman. I do not have a prepared statement this morning because when I found out I was going to be on a small panel and knowing the dialogue that takes place in this committee, more often than most other committees, I knew there would be plenty to respond to by the time that I got to speak, and that certainly is the case.

I would like to respond to several things that were just said and then sort of work backwards through the day. It is unfortunate that Mr. Pressler is not here, because if he wants to know about small systems operation, I represent most of the small system operators in the United States, and I certainly intend to get on the record some of the answers to the questions he was asking.

As to Sue's statement just a moment ago, the Community Antenna Television Associations supports S. 66 and would like to congratulate the committee on one of the most thorough jobs, contrary to her statement of finding the facts and trying to decide the issues in terms of studies of cable television and the problem of Federal, State, and local relationships and the entire interrelationship of cable with other technologies.

The studies have been going on since 1970, and if Sue is interested in having some of them, I am more than willing to give them to you. There are thousands and thousands and thousands of pages of studies. There have been at least two commissions studying the exact issue. There have been several Federal agencies that have spent great deals of time and great deals of money trying to deal with this issue. And what it all boils down to today is that as we heard this morning, both the cable industry and the cities recognize that there are problems.

CATA believes that S. 66 solves a great many of those problems, and leaves enough latitude to deal with individual situations as they arise. So far as we understand and we would appreciate it if the record were clear on this so far as we understand, and as you stated in questions earlier today, the bill does allow cities to enforce contractual agreements. The bill does allow cities to require specific performance, for instance. And therefore, the complaint that the city is left powerless to deal with promises that are made and accepted in a contract and then have those contracts violated is simply not true.

Furthermore, using the example of Dubuque, I am perfectly happy to use Sue's example of Dubuque to show how S. 66 does contemplate problems and does deal with the issues.

Sue mentioned that the Dubuque operator had a 12-channel system and that it is a very lucrative market. Both of those are true. And had an operator tried, at a renewal period, particularly after S. 66 points out to every city and State in the United States that they shall not grant exclusive franchises but shall have the power to grant multiple franchises, had an operator in the marketplace of today, as opposed to 5 years ago when 12 channels may have been reasonable, tried to maintain a 12-channel system in Dubuque today, another operator would have come in, I can guarantee you, and competed in the open marketplace to supply those services that you claim everybody wants.

Now, I agree with you that those services today contemplate more than 12 channels. They may not contemplate more than 35 channels. Unfortunately, the cities are requiring 54 or 108 or whatever you want to name this week. We just had an editorial in the Washington Post recently, or a commentary in the Washington Post recently, that suggested that the city of Washington should withhold the granting of a franchise at this point because the city should really require fiber optics.

Nobody is quite sure what these technologies are going to be used for, and this is what frightens CATA the most. The operators that I represent primarily are operating systems in cities throughout the United States that are not the urban areas, and in those cities, in response to Mr. Pressler's comments, the problem arises of franchise renewal. Those renewals are being severely warped by the perception that is being given by some city officials, and Frank Greif certainly did it this morning, that cable television is the harbinger of every new technological wonder in the world.

The fact of the matter is that as Tom Wheeler pointed out, every study that the cable industry has done indicates that right now, the American public is willing to pay for only one set of new inputs into their home on the video medium that we call cable television, and that is, at the moment, as Sue has pointed out, sports and movies.

Now, it is true that a cable can supply teletext and two-way information, and burglar alarms and fire alarms and the entire list that Sue just gave, and by the way, that list was printed in the Sloan Commission report in 1971. This is nothing new. But the fact of the matter is that so far, neither the industry that has to find the money to pay to build those things nor the public that has to pay that industry ultimately to make it work want to buy them.

As a matter of fact, when we start talking about things like teletext, the latest studies by AT&T in the speeches that their representatives have made recently indicate that they do not believe that teletext will be a viable medium on anything other than telephone lines at least into the 1990s. Yet, we have Frank Greif this morning being the social engineer and saying that Government should assume the role of deciding the structure of the future industry of telecommunications.

This to me is frightening. The Community Antenna Television Association, if it is going to take one firm-stand and we usually do—is going to take the stand that says the Government should not be defining the role of any industry; it should not be trying to define the future. It should be representing the public to make sure that the public is served by industry. That is for sure. But it should not be trying to define what that industry or what that communications future will be.

I dare say that nobody in the cable television industry knows what it is going to be. I am certainly here to say publicly this morning that maybe I am the only one on all of the panels today that is going to say publicly I do not know what is going to happen with cable television, I do not know what services will work and will not work. And certainly, the members of the Community Antenna Television Association and most of the cable industry are getting to the point of saying, we really do not know.

I wish that Mr. Gorton were here because he is talking about alternative technologies and he is asking questions about—isn't cable the most efficient way of bringing the most cost-effective technology? Cost-effective for what? We are ignoring the services in favor of looking at the system. Mr. Greif tried to do that this morning. He tried to intimate that there were two different businesses; there was the business of building the wire, and then there was the business of what that wire does.

Well, that is like saying that a bus company is in the business of simply running vehicles up and down the street. That is not the business. The business is how you sell something through that wire, or how you make money by having that wire. And in that regard,—I do not know in yesterday's testimony whether this was brought up, but since a lot of people have been talking about competition and the old standby phrase is that cable will never have—there will never be two cables in a city and, therefore, we are a monopoly. Frank said that again this morning.

The AT&T engineering department has just announced the approval systemwide by AT&T for a new pole attachment bolt. Now, that might sound not terribly important, but I happen to think it is. That new bolt will allow a cable company or a competing cable company to attach a second bolt directly to the structure that the existing cable company has, and run a parallel second wire without any further make-ready cost or additional pole line adjustment cost on the telephone poles that exist today.

Now, if you go back into the history of pole attachments and all the problems that the cable industry has had with that, you will find that one of the reasons it is very unlikely that you will find duplicating cables going down the same street is because of the problem of attaching them to telephone poles, and the excessive cost of the second operator trying to get in and maneuver all of the wires around to be able to put his wire on the pole as well.

Well, AT&T has just announced a new little bolt that just eliminates that whole problem. A second wire can go down the same street now, and the added cost in terms of running those poles and running those wires is not significant. That in itself will have a major impact, and I dare say that there is not a franchise in this country that deals with that fact.

We believe that S. 66 does deal with the issues involved. We believe that S. 66 is going to be helpful in wiring rural America, because as Mr. Pressler noted, a lot of rural America is not wired because it is not economic, and it is becoming less economic to wire those areas simply because the local jurisdictions believe that they must get the most that they can get. And they have a concept of more is better.

Now, I think the blame lies both with the franchising authorities and with the cable operators. I am not laying the blame on one side on this, but that is the fact. And because of that fact, the requirements being imposed on operators trying to build outside of the urban areas is getting so severe that it is less and less likely that those rural areas will be built.

We can do it with S. 66. Thank you.

Senator **Goldwater**. Thank you very much. You used the word during your dissertation that I like—competition—and I think that will answer a lot of your questions; maybe not all of them. But competition is what we badly need. In the present existing fields of communication, I think if we had more networks trying to do a better job, we would have less problems. We would get better programs.

And if the cable systems do not provide the kind of programs that the customers want, it is very easy for them to go out of business, and that is the way we have always determined things in our country. It is why deregulation rates so high on the agenda of this administration.

I would like to read one section from last year's committee report on S. 2172, because the question came up. Section 2 is not intended to impede the initial franchise selection process as long as it is done within the guidelines set forth in title VI. Nor is there anything that should prevent a city from negotiating truly voluntary agreements with a cable operator subsequent to the initial franchise process or at renewal. However, it is clear that the intent of this committee that such an arrangement should remain consistent with the objectives of this title. So, I do think that the cities have a great deal of latitude in negotiating with the cable company.

I want to repeat the question that I asked the other gentlemen and would ask if you all want to comment, fine and dandy. What impact do you think the lawsuit by the Mountain States Legal Foundation against the city of Denver, if successful, will have on the future of the cable industry?

Mr. **Evans**. Mr. Chairman, I would respond to that. I think it would have tremendous impact. I think it is a great concern to all of us, to see what the outcome of that situation would be. I hope that is one and only, because that is something that concerns us all.

Senator **Goldwater**. Of course, that could upset everything we are talking about. I do not know what the progress of that suit is going to be. I do not think anybody does, but it is something that we have to be apprehensive of because of the effect it will have on legislation that we are interested in. And it will be of importance to the cities because of the impact that it will have on you. Would you care to comment on that, Ms. Buske?

Ms. **Buske**. I think the Mountain States Legal Foundation case should be of concern to not only just the cities but the cable operators, and I think that has been expressed here. I think there are negative ramifications for both parties involved in this relationship, and I think that the lawsuit was entered into from what I perceive to be a rather strange perception.

It seems on the surface like it might be logical, but when you go in depth it does not make a whole lot of sense. The judge, it is my understanding, has not yet made a ruling on when he will be hearing the case, et cetera. Steve may have some more additional information on that.

Mr. **Effros**. Well, as Sue said, the cable industry is seriously concerned about the *Mountain States* case. What impact it would have, it would create massive dislocations in the financial community for the cable television industry because the minimum amount of certainty that we have today with regard to franchising and known competition, at least in terms of how soon that competition will be upon us, will be thrown out the window.

The *Mountain States* case will allow severe dislocations, as I said. In terms of the case itself, I believe that right now the judge is still deciding a jurisdictional issue of whether the Mountain States Legal Foundation has standing to sue. So it may very well be that the case will be out of court and then moved back into court again with somebody else having standing.

But the *Mountain States* case—I do not know why anybody would not say this on the record—is probably one of the main reasons why the National League of Cities and the National Cable Television Association have finally gotten to sit down and talking to each other. Because both recognize that we need S. 66 now.

There may be differences among the various parties as to what S. 66 should say or how broad the latitude should be for the cities or how much access there should be, and those details are still going to be argued before you and in the halls of Congress.

But the fact is that everybody recognizes that if a case like this does come along, either today or a year from now, and totally threw out the jurisdictional underpinnings of the cities and the cable operators with regard to franchising, then nobody knows what will happen next. And we cannot afford to do that when we are spending the amounts of money we are spending these days to build cable television in the United States.

Senator Goldwater. I thank you.

Mr. **Evans**. Mr. Chairman, might I ask Steve a question, please, for clarification?

Senator Goldwater. Yes, certainly.

Mr. **Evans**. When you said that you did not see any need for regulation as far as the cable industry is concerned, is that Federal, State, and local included?

Mr. **Effros**. What I was saying by that statement was that we do not see the need for any government level, Federal, State, or local, defining the future of an industry that nobody can define today. I am not saying that we do not need regulation to make sure that the streets and ways are protected and that the public is protected from cutting down trees and all of those other public safety necessities. I am not saying that those are not necessary.

I am saying that when the Government gets into the business of trying to define an industry that really does not exist yet, it is way out of bounds; it is in the business of social engineering. And I do not think just because, with all due respect, you are elected and the gentlemen who sit on this panel are elected—and I had hired—I do not think it makes any difference that you would know more about what the future of telecommunications is going to hold than I do. And, quite frankly, I do not think either of us knows what the future is.

And, therefore, it is extremly dangerous from CATA's point of view for the Government to be interposing itself and defining what the future of telecommunications is. We do not think that the Government should be in that business.

Mr. EVANS. Well, I would not debate that issue with you. But my concern with your statement is that it did not need to be regulated.

Mr. EFFROS. In terms of public safety, we are more than willing to accept regulation.

Senator GOLDWATER. Well, I want to repeat what I said at the outset, and why, because, last year, we thought we had a pretty good bill and it came up right at the tail end of the regular session before we got into that stupid, lame-brained session.

And then we started to get objections from the League of Cities, including close friends of mine in my own State that had told me what they liked about the bill and never found anything they disliked.

Now, we want to make sure that does not happen again. That is why I am so happy that the two sides are sitting down, and we would hope that as the information comes back to us and as other information is developed, we would have access to it so that we can, if necessary, amend the legislation. What we will report to the floor will undoubtedly be changed quite a few times before we ask for final action on it, because this bill has to go through the House, too. And the House has a little different idea or attitude about communications.

I have one more question, and you can all comment on it. Since competitive services that we heard from yesterday, such as STV, MDS, DBS, private cable, low-powered television and over-the-air broadcast are not substantively regulated by any level of Government—Federal, State or local—why should cable be subject to substantive regulation?

Mr. EVANS. As far as regulation, that was the purpose of my question of Steve earlier, Mr. Chairman. I feel that any communication should be regulated or none should be regulated. And I think that is the statement that I would make for the record.

Senator GOLDWATER. I agree with you on that.

There has got to be some kind of balance between the cable operator and the needs of that community. I am not talking about social engineering. I am talking about simply a balance of making sure that the public safety is maintained, as Steve has said, but also, that services that that community needs are provided.

I, having been a franchise consultant, have not been the kind of person who would say a city should require enormous amounts of things of the cable operator in their RFP. Rather, I, say, give indications of what your desires are, and let the competitive marketplace bring out what the cable companies will be willing to offer.

So what I am suggesting is that cable is different, number one, than STV, MDS or whatever. And if you will check some of the leads in the trades in the last 2 weeks you will see some STV systems. I believe STV systems are beginning to be regulated in some cities because there is some concern that there is an unfair balance between cable and these systems, and that they, indeed, should have some minimal amount of regulation.

So we are beginning to see a little bit of regulation move into those areas.

Senator **Goldwater**. On that, because I think this is an interesting point that I have not heard brought up to any extent, when the regulation of the frequency spectrum was first thought of back in the 1920s, and both in 1927 and later in the Communications Act of 1934, it was felt—and I think rightly so, although I like to argue the point—that the frequencies that go through the air above us belong to the public because that is public land.

But, what we are talking about here with cable are signals that have gone over the air, or sometimes just from a satellite, and that raises some other very interesting legal points. But, in the main, they are transmitted by wire, the same as the telephone system.

Now, the cities do not have jurisdiction over the telephones; they will not have jurisdiction over the bare wire or the optical wire, so that raises an interesting legal point that I am not, by any means, equipped to discuss, because I am not a lawyer. I have just been a radio operator all of my life. I think that stuff up there belongs to me a little bit, but it will be an interesting point. Mr. Effros?

Mr. **Effros**. Senator, you are not a lawyer, but you certainly know politics and you know the nature of Government. And what Sue just described is the classic nature of Government.

SMATV has come into the marketplace; it is starting to compete. Competition now is real, and what is the local government's reaction? Do they deregulate the one that they said was a monopoly and, therefore, let the marketplace work? No. Their solution is to regulate the SMATV operator as well.

We would suggest that the opposite would be the better approach. Unfortunately, it is the one that most governments do not take. Once you get jurisdiction, you get more jurisdiction and more jurisdiction and more jurisdiction.

And what you are saying is absolutely correct. There are going to be other wires in that very same trench or on the very same poles that that city cannot regulate as to their use. And the cable industry is the one that, because of an anomaly in terms of the time that we started building and the way that we were regulated from the first, is the only one that is being regulated in this way.

I dare say—and again, I would like to put this on the record—there is a presumption in all of this, and we have the mayor of Dallas sitting here. There is a presumption that the cable industry is growing and that cable is doing extremely well and, therefore, it has to provide other services for the public.

I question whether cable television in the major urban centers will do well. I question whether cable television in the major urban centers is going to survive. It is a highly speculative business at this point, and the more regulation that is put on us now, the less likely it is that we will survive.

Ms. **Buske**. I think one of the things that has been overlooked here, and I feel obligated to respond in light of Steve's comment regarding urban markets, is that the cable industry has dealt primarily in a market in the past where they have had a situation where they have had a monopoly. In the Dubuques and the parts of Seattles of the world, you do not get television service without cable television, and that is why in the Dubuques of the world you have 85 to 90 percent penetration of some of these systems.

Now, that is a city of 65,000 people.

Mr. **Effros**. And S. 66 covers that.

Ms. **Buske**. Now, let's take a look at what is going to happen as cable moves into the open market. Suddenly, the cable industry has to become much more sophisticated about its marketing, about its management. It is moving from a business that was heavily rural and small community oriented in the past to a business where they have to deal in urban markets.

And one of the things that we read—and I feel very strongly about this—in the trades is that, the cable industry has recognized that, in the past, they have not had to deal with some of the marketing issues, in the small or more rural market, that they are going to have to deal with now in the urban market. The sophistication of their management is going to have to improve. And I do not think regulation has a thing to do with some of the areas that we have talked about here today.

It is how well that business is run. It is how sophisticated that marketing is, and it is how sophisticated that management is. And I think we have to be aware that the cable industry is going through an evolution itself in those areas, and that part of the reason it succeeds or fails may be its own fault.

Senator **Goldwater**. Well, I think that could be said about the whole communications industry. I do not know if cable would have dreamed up Winds of War, for example. That is a good way to get rid of $40 million.

But, again, I am not the one to judge it. My wife loved it; I did not.

I want to thank all of you. We have a bill coming up on the floor very shortly that has to do with communications. I want to thank each one of you for coming. You have made a great contribution, and I can only say that we look forward to the continuing dialog between the two sides so that we can really get a bill on the floor that is going to do something and then not face, at the last minute, a whole deluge of objections that we have never heard of.

So thank you, and have a nice trip home.

[Whereupon, at 11:20 a.m., the subcommittee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF AMERICAN BROADCASTING COMPANIES, INC.

American Broadcasting Companies, Inc. ("ABC") appreciates the opportunity to present this statement for association with the hearing record on S. 66, the "Cable Telecommunications Act of 1983."

ABC supports the efforts of the subcommittee to develop legislative guidelines which maximize competition among entities competing in the telecommunications industry and minimize artificial and unnecessary governmental regulations and restraints.

ABC is in the process of developing a new, innovative service, the Home View Network ("HVN"). HVN plans to present, through the five ABC-owned television stations and the ABC Television Network affiliates which elect to participate, the lastest feature motion pictures, shortly after their exhibition in theaters, as well as other entertainment and informational programing, including at least 2 hours of quality children's programing each month. The service will be offered on a monthly subscription basis and will be telecast in scrambled form during the overnight hours of 2 a.m. to 6 a.m. (ET and PT) and 1 a.m. to 5 a.m. (CT and MT) when television stations, for the most part, do not presently operate. The HVN service is described in greater detail in the "Introduction and Overview" section of ABC's application to the Federal Communications Commission which is attached hereto as Appendix A.

On August 5, 1982, the Federal Communications Commission authorized institution of ABC's HVN service. A copy of the Commission's Public Notice granting ABC's application is attached as Appendix B.

At this time, ABC anticipates commencement of HVN service in the Chicago area during the first quarter of 1984.

APPENDIX A

APPLICATION OF AMERICAN BROADCASTING COMPANIES, INC., FOR SUBSCRIPTION TELEVISION AUTHORIZATIONS—FILED PURSUANT TO SECTION 73.642 OF THE COMMISSION'S RULES AND THE *fifth report and order* in docket 11279

I.—Introduction and overview

In this application American Broadcasting Companies, Inc. ("ABC") seeks authority to offer to the American viewing public, through the facilities of the ABC Television Network and its affiliated stations, a new subscription television service, the Home View Network.

The Home View Network ("HVN") will present the latest feature motion pictures, shortly after their exhibition in theatres, as well as other entertainment and informational programming, including at least 2 hours of quality children's programing each month. The service will be offered on a monthly subscription basis.

The five ABC-owned television stations and other ABC Television Network afiliates which elect to participate will transmit this program service during the overnight hours of 2:00 a.m. to 6:00 a.m. (ET and PT) or 1:00 a.m. to 5:00 a.m. (CT and MT), when, for the most part, they do not presently operate.[1] Service will be offered for 3 hours per night at least 5 days per week. Programs in scrambled form will be intended for automatic video cassette recording and subsequent viewing at times convenient to subscribers.

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[1] ABC has not yet fully reviewed HVN with its Television Network affiliates. A copy of this application will be provided to each affiliate promptly following its filing with the Commission. Shortly thereafter, ABC will consult with its affiliates, on an individual basis, to determine which would be interested in participating in HVN. This application will then be supplemented to provide such information.

It is anticipated that subscribers to HVN will be charged a monthly fee of $19.95, plus a one-time-only service initiation charge. Customers who elect to lease or purchase a video cassette recorder ("VCR") will also be charged for that equipment.

The subscription system to be used for the Home View Network is an innovative technology developed jointly by Sony Corporation and Sony Corporation of America. Among the features of this new system are the following:

A. The program is encoded onto video tape in advance of transmission. This means that no modification in a station's transmission system is required, and (for the first time in the history of U.S. subscription television) all technical standards for television transmission will be met. ABC affiliated stations will be able to broadcast HVN programs in the same fashion as all other network programs.

B. The encoding process can be accomplished in a single ABC studio facility in New York City (or elsewhere), providing maximum security for the programing, with programs distributed in the conventional network mode.

C. Because subscribers will record the programs in scrambled form and because the recording itself contains decoding keys, the reception and decoding component of the system is unusually secure.

D. Minimum technical installation is required at the subscriber's residence. No special antenna facility is needed; the subscriber will receive the same quality reception as he regularly receives from the local ABC-affiliated station. No modification of the television receiver or the video cassette recorder is required. The subscriber will lease the required decoder and can use his own VCR or, at his option, one supplied with the decoder. The necessary connections of the components will be made as part of the installation.[2]

The programing aspects of HVN will be the sole and direct responsibility of ABC. Marketing to subscribers will likewise be the responsibility of ABC, carried out either directly or through contract arrangements with others. Thus, ABC, a subsidiary thereof, or third parties under contract to ABC, will process orders for the service, make installations, and handle billing and other customer services.

The basic equipment components—i.e., encoding devices, decoder units, video tape recorders and blank tapes—will be supplied to ABC under an agreement (Exhibit C hereto) with Sony Corporation of America (SONAM). SONAM will also provide ABC access to SONAM's currently existing network of factory service centers and independent services in order to effect installation, maintenance, and repair of the foregoing equipment components.

ABC will enter into separate affilation agreements with ABC Television Network affiliates which elect to offer HVN in their markets. Such agreements will provide for payments to affiliates based upon the number of subscribers to the service in their markets. As with all ABC Television Network programing, affiliates will have the right to reject any HVN program.

ABC believes that HVN will be attractive to most affiliates because it will provide an opportunity to offer a unique subscription service in hours when, for the most part, they do not now operate.

This application is submitted in two separate and severable parts. The first part (Section II) seeks individual STV authorizations for each of the five ABC-owned television stations: WABC-TV, New York, New York; KABC-TV, Los Angeles, California; WLS-TV, Chicago, Illinois; KGO-TV, San Francisco, California; and WXYZ-TV, Detroit, Michigan.[3] As licensee of these stations, ABC is clearly the appropriate applicant.

The second part (Section III) is for a limited STV authorization, to run concurrent with the WABC-TV license, to provide subscription television service for 3 hours per night between the hours of 2:00 a.m. and 6:00 a.m. (ET and PT) or 1:00 a.m. to 5:00 a.m. (CT and MT), local time, through the facilities of other television stations throughout the United States which are affiliates of the ABC Television Network, all in accordance with the terms of this application. Although this second part represents an STV proposal of first impression, ABC believes that the special characteristics of HVN as a network subscription offering warrant this approach. ABC also believes that this single application approach is most conducive to orderly and efficient Commission procedures, as well as most convenient and beneficial for ABC Television Network affiliates. To the extent that a waiver of Section 73.642(a) of the Commission's Rules is required to entertain this second part of the application, such waiver is requested.

In Section IV, certain public interest benefits of the proposal are summarized.

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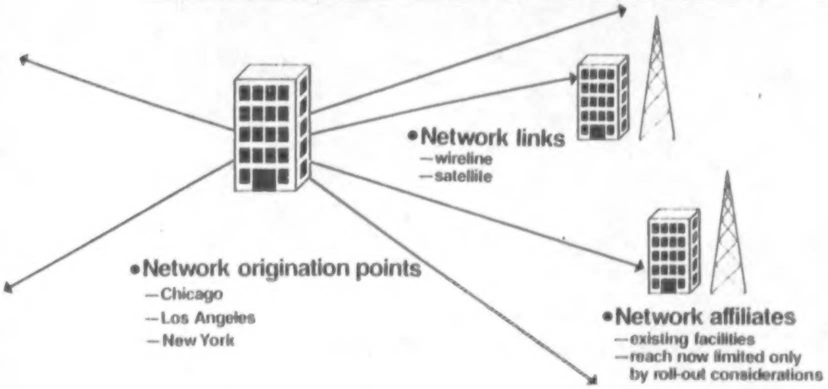
[2] The illustrations appearing at the end of this section highlight some of these basic features.

[3] The licensee of Station WXYZ-TV is WXYZ, Inc., a wholly owned subsidiary of ABC, which joins in this application.

THE HOMEVIEWNETWORK

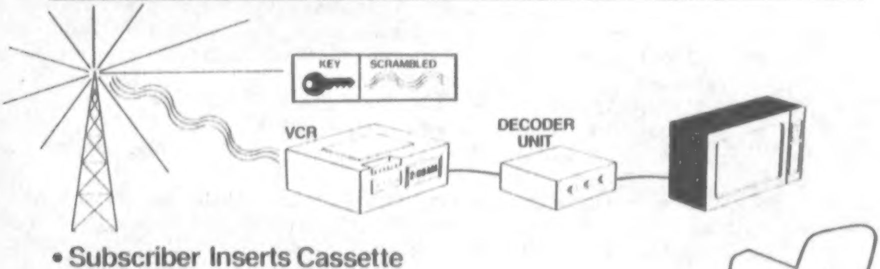
IN-PLACE FACILITIES- NATIONALLY



- Network links
  - —wireline
  - —satellite
- Network origination points
  - —Chicago
  - —Los Angeles
  - —New York
- Network affiliates
  - —existing facilities
  - —reach now limited only by roll-out considerations

THE HOMEVIEWNETWORK

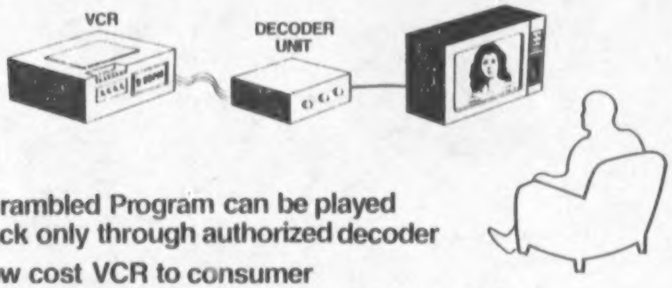
SIMPLE AND CONVENIENT CONSUMER DELIVERY



- Subscriber Inserts Cassette
- Overnight Delivery Time
- Preset Start
- Scrambled Program Recorded
- Key Sent and Stored After Program Delivery

THE HOMEVIEWNETWORK

PLAYBACK- UNRESTRICTED TIME, RESTRICTED LOCATION



- Scrambled Program can be played back only through authorized decoder
- Low cost VCR to consumer
- No consumer need for multiple pay services

APPENDIX B

[Federal Communications Commission, Report No. 18482, Aug. 5, 1982]

ABC'S OWNED AND AFFILIATED STATIONS GRANTED STV AUTHORITY FOR HOME VIEW NETWORK

The Commission has granted American Broadcasting Companies, Inc., subscription television authority (STV) for its five owned TV stations and 195 affiliated stations so they may carry ABC's Home View Network programing.

Authorization directly to ABC for the affiliates required waiver of FCC rules which permit issuance of STV authorizations only to licensee. The Commission, in granting the waiver, said it would be most efficient and orderly to grant a national authorization. ABC has been primarily responsible for instituting the Home View Network service, it noted. Affilates participate voluntarily, may cancel on 30-day notice, and reserve the right to reject programing.

The ABC-owned stations are WABC-TV, New York, KABC-TV, Los Angeles, WLS-TV, Chicago, KGO-TV, San Francisco, and WXYZ-TV, Detroit. All broadcast on Channel 7. WXYZ-TV is licensed to WXYZ, Inc., a wholly owned subsidiary of ABC.

Home View Network-encoded programing will be broadcast during periods largely unused for conventional television. A subscriber will preset a video cassette recorder to record the scrambled programs. The subscriber's decoder will restore the programing to normal mode for viewing on a standard TV set.

ABC will use the SONY AESOP-I subscription television system, which has been approved by the FCC.

The Commission made its grant of STV authority effective August 5, since that is the effective date of its June 17 action eliminating certain STV regulatory restraints. Those included the requirement that STV applicants ascertain their community's needs and interests regarding STV programing and a provision limiting STV operations to communities within the highest-quality service area of at least four other commercial TV stations (the "complement of four" rule).

Action by the Commission August 4, 1982, by Letters (FCC 82-366, 82-367). Commissioners Fowler (Chairman), Quello, Washburn, Fogarty, Jones, Dawson, and Rivera.

STATEMENT OF THE AMERCIAN RADIO RELAY LEAGUE, INC.

The American Radio Relay League, a national nonprofit organization which is the primary representative of the more than 400,000 Amateur Radio operators licensed by the Federal Communications Commission, welcomes this opportunity to submit for your consideration its views and concerns in connection with cable television and the provision of cable television service to the public, the object of S. 66, introduced by Senator Baker for Senator Goldwater.

INCIDENTS OF RADIO FREQUENCY INTERFERENCE ARE CAUSED BY CABLE TELEVISION SIGNAL LEAKAGE

The Amateur Radio operators which serve all of the citizens of the United States and the World by providing emergency and other public-service communications are greatly concerned about and wish to bring to the attention of the Committee the rapidincreasing incidents of radio frequency interference to Amateur Radio VHF and UHF communications caused by signal leakage from cable television systems. As the goal of the instant legislation is to facilitate the provision of good quality cable television service to the public, this Committee should be aware of the degredation to licensed public safety radio services, especially the Amateur Radio Service, which has thus far developed as a direct result of leakage from cable television systems.

Radio frequency interference (RFI) arises when a signal radiated by a transmitter is picked up by an electronic device in such a manner that it prevents the clear reception of another and desired signal or causes malfunction of some electronic device other than a receiver. Almost any transmitter of any service is a potential interference source.

As is the case with respect to ground-to-air communication and navigation services,[1] Amateur Radio operators in over 25 States have reported both to the League and the Federal Communications Commission, servere interference caused by the operation of cable systems which "leak" radio frequency energy on amateur frequencies. Worse, consumers of cable television are subjected to severe interference from properly operating amateur VHF stations and radio stations of other services. This interaction is a direct, proximate result of the use by cable companies of inadequate shielding, poor quality components or poor installation of cable drops at residences and/or normal wear of such components, combined with the use of amateur frequencies on certain cable channels.

EXISTING RULES ARE INEFFECTIVE IN DEALING WITH CABLE TELEVISION INTERFERENCE

While it is true that a cable system is a "closed" or nonradiating system by definition, it is far from that as a matter of fact. The Federal Communication Commission acknowledges this by virtue of Section 76.605 of its Rules, (47 C.F.R. 76.605) which imposes maximum permissible field strengths for cable signal leakage. Cable leakage research conducted by the League has shown that many, perhaps most systems operating in the United States display excessive levels of RB radiation in violation of the allowable limits specified in Section 76.605 of the Federal Communications Commission's Rules.

Amateurs are uniquely subject to interference from cable leakage, even at levels only slightly above that permitted by the rules, and cable consumers are uniquely subject to interference from amateur signals as a result of two factors. The first is the use by cable companies of amateur frequencies (in so-called "mid-band" channel arrangements) on cable systems which by their nature are subject to some leakage. The second factor is the inherent geographic proximity of cable systems to Amateur Radio stations. Amateur stations are located in and operate from residential areas, often next door to consumers of cable television, or even in the same dwelling. Cable companies do not use the frequencies of any other radio service which is subject to such close geographic proximity.

There are rules[2] which require cable systems to eliminate harmful interference to authorized radio stations. There is no rule, however, which requires a cable system to remedy interference suffered by its own subscribers when those consumers' cable drops receive amateur signals due to an inability to reject such signals. The amateurs in those situations are blamed and often sued in local courts for "creating" interference which is not their fault and over which they have no control. If thousands of cable subscribers receive interference from a few hundred amateurs, it is easy to see which group is likely to be found responsible by local courts, unschooled in the area of radio frequency interference, to which such complaints are routinely referred. Due to budgetary limitations and the sheer volume of present and anticipated future cases of interference, both to amateurs and to cable subscribers, the Commission lacks the manpower to effectively combat the problem on a case-by-case basis. Nor is it possible for amateurs or cable consumers to solve individual interference problems. In all fairness, even the cable companies cannot be expected to successfully monitor and test the miles of cable so as to prevent the leaking cables from causing interference. The only practical way to resolve this unique problem is to eliminate the inherent incompatibility by requiring cable companies to utilize frequencies other than those allocated to the Amateur Radio Service.

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[1] See Docket 21006, *Further Notice of Proposed Rule Making*, FCC 80-126, 76 FCC 2d 311 *et seq.* (1980).

[2] Section 76.613(b) of the Rules provides that in the event the operation of a CATV system causes harmful interference to reception of authorized radio stations, the operator of the station shall immediately take whatever steps are necessary to remedy the interference.

The American Radio Relay League appreciates the opportunity to bring this most serious matter to the attention of this Committee, and urges that the Committee acknowledge the existence of the problem in the Report on this Legislation, so that it is brought forcefully to the attention of the cable television industry and the Federal Communications Commission. The problem is serious and deserving of higher priority than it enjoys presently, so that the extensive public service record of the Amateur Radio Service might continue, and so that consumers of cable television might enjoy a good quality product in the future.

JOINT STATEMENT OF CABLE AMERICA, MACLEAN-HUNTER CABLE TV LTD., AND ROGERS U.S. CABLESYSTEMS

Mr. Chairman, we appreciate the opportunity to submit this statement for the hearing record on S. 66, the Cable Telecommunications Act of 1983. This statement is submitted to the Subcommittee by three Canadian cable television companies that own and operate cable systems in the United States—collectively serving some three-percent of U.S. cable subscribers. In all, Canadian-owned cable systems serve less than five percent of U.S. Cable subscribers.

We offer no opinion on the merits of S. 66, other than to reiterate our continued opposition to section 605(b). That provision can result in restrictions on ownership of domestic cable systems by foreign-owned cable operators. It prescribes a policy of reciprocity for a single sector of the telecommunications industry. This policy violates the spirit of fair trade between the United States and Canada.

Before we discuss the specific problems posed by Section 605(b), it would be useful to put the "foreign ownership" issue into perspective. In the first place, the term "foreign owership" is a misnomer. The efforts to bar competition are aimed at Canadian companies only. In the late 1960's, foreign firms controlled over 70 percent of the Canadian cable market. The Canadian government saw this as a threat to the nation's socio-economic goals of promoting Canadian culture and business. Thus, in 1969, the Canadian Radio-television and Telecommunications Commission (CRTC) received Cabinet-level directives to limit foreign ownership.

On the other hand, penetration of the American cable market by Canadian firms was, and still is, minimal. Nevertheless, in retaliation for the Canadian action, several U.S. cable conpanies formally requested the Federal Communications Commission to ban Canadian-owned cable companies from doing business in the United States. In 1976, the FCC rejected the petition, choosing to rely on free market forces and local franchising authorities to decide whether a particular Canadian company would best serve its local public interest.

Four years later, pressured by a few of its members, the National Cable Television Association reversed its earlier opposition to ownership limitations and urged the FCC to ban Canadian cable companies from operating in the United States until Canada lifted its restrictions. In 1980, the FCC again rejected the request, finding that such a ban would be a useless protectionist measure which would not benefit American consumers.

A handful of U.S. cable operators persisted in their push for sector-specific reciprocity, turning to Congress for the relief denied them twice by the Commission. By now, however, the goal of these companies had changed from one of forcing equal access to markets to one of eliminating Canadian competition in the few U.S. markets where Canadian companies were seeking the franchises.

In March 1982, Senator Goldwater, Chairman of the Senate Communications Subcommittee, introduced S. 2172. That bill, as reported by the Senate Commerce Committee would have given the FCC authority to establish rules requiring reciprocal treatment for cable operators from countries that restrict U.S. entry.

S. 2172 would have "grandfathered" all U.S. cable franchises which were either awarded or pending as of the effective date of the bill, so that they would be unaffected by any foreign ownership restrictions adopted by the Commission.

In hearings on the Senate legislation, only one witness—a cable television company—spoke out in favor of Section 605(b). The measure was opposed by the National Telecommunications and Information Administration (NTIA), the U.S. Trade Representative (USTR), the Federal Communications Commission, the Community Antenna Television Association, the National League of Cities, the City of Portland, the city of Syracuse, and a number of U.S. cable operators whose companies are partly owned by Canadian firms.

What little support may have existed for imposing sector-specific reciprocity requirements on cable television ownership has steadily waned during the past year. Within the U.S. industry, foreign ownership has become a dying issue as most cities and towns complete the franchising process. In most of the major markets, cable TV franchises have already been awarded, with no significant net gain in the percentage of subscribers served by Canadian-owned systems. We know of no party that continues activly to support foreign ownership restrictions today.

In the closing weeks of the 97th Congress, it appeard that a consensus on general trade issues was developing as the Administration and some Senate leaders, including Senator Danforth, seemed to agree that sector-specific reciprocity would be counterproductve, and that trade policy should not be parceled out piecemeal to individual agencies, but should be centralized in the office of the U.S. Trade Representative (USTR). Unfortunately, that consensus is not fully reflected in S. 66.

Section 605(b) of S. 66 gives the FCC explicit authority to conduct inquiries into foreign trade practices affecting access to foreign cable markets by U.S. firms. While the FCC is directed to submit information obtained through such inquiries to the USTR to assist in identification of significant barriers to free trade, it is the FCC—not the USTR—which has the authority to initiate the inquiry. This runs counter to the concept that the USTR should have the lead role in all trade matters.

We find this provision objectionable. Regardless of its diplomatic working, any legislative provision which might trigger U.S. restrictions on free trade in cable investments based on sector-specific reciprocity is unnecessary and counterproductive.

This approach would actually hurt, rather than help, the U.S. economy. Canadian cable operators, who have been selected by cities and towns to serve their communities, are making capital investments in the United States that provide jobs to thousands of U.S. citizens, and contribute significantly to the state-of-the-art in cable television technology in the United States.

Protectionist legislation can only frustrate U.S. trade with Canada in the field of telecommunications products and services—a field in which the balance of trade is weighted heavily in favor of the United States—and open the door to retaliatory measures.

To illustrate how free trade in telecommunications products and services benefits both countries, we call to your attention the fact a group of Canadian cable companies have signed a long-term agreement with Zenith Radio Corporation of Glenview, Illinois, to supply addressable converters to be used by cable subscribers in Canada. Zenith is manufacturing the devices in Canada. As a result, Canada gains capital investment and jobs. The profits flow back to the American economy. Canada and the United States benefit similarly by allowing Canadian cable companies to invest in the United States. These business arrangements promote industrial growth and foster a spirit of economic cooperation.

Business management and governments on both sides of our border should be encouraging these productive and mutually beneficial relationships.

Thus, for all these reasons, our companies oppose the inclusion of 605(b) in S. 66. However, if the Committee decides to retain Section 605(b), we urge that it be modified. As we noted, S. 2172 contained a "grandfather" clause to protect all domestic cable franchises already awarded or pending. We submit that a similar "grandfather" provision should be written into S. 66.

We appreciate the fact that the Committee, in considering S. 2172 last year, recognized the potential disruption—in many cases affecting U.S. investors who are partners with our companies—that could occur if ownership restrictions were imposed retroactively. This concern is equally valid now, and should be reflected in S. 66.

In addition, we suggest that the language in Section 605(b) be rewritten to make it clear that any inquiry and report by the FCC should be initiated at the request of the USTR and not unilaterally by the Commission. This will make certain that the USTR retains primary authority in any matter related to foreign trade and will insure that the matter of cable ownership is considered in the context of overall trade relations between the United States and Canada.

Once again, we appreciate the opportunity to share our views with you. Our companies are prepared to work with the Subcommittee and its staff to come up with legislative language to address our concerns. We regret that we must oppose enactment of S. 66 in its current form.

STATEMENT OF RICHARD H. HIRSCH, SECRETARY OF COMMUNICATION, UNITED STATES CATHOLIC CONFERENCE

INTRODUCTION

The United States Catholic Conference ("USCC"), through its Department of Communication, submits the following comments on S. 66, the Cable Telecommunications Act of 1983. The USCC is a corporate instrumentality through which the American Catholic bishops cooperate among themselves and with others to formulate and implement policies which benefit the church and society generally. Among its responsibilities, the USCC is authorized to represent the Catholic people of the United States, speaking through their bishops, on matters of public concern. One of the primary matters of public concern to the USCC is communications, including the use of the electronic media, both on a national level and in support of efforts at the regional and diocesan levels.

Virtually every Catholic diocese in the nation is actively engaged in a communication program of service to Catholics and others. Many of these dioceses emply electronic media. Over half of the diocesan communications directors responding to a 1982 survey reported that they now have access to cable production facilities and a quarter of them are already producing material for cable. Forty-two percent of these communicators look to cable as their primary outlet in the future. They expect to increase use of cable access as broadcast opportunities level off and decline.

In September, 1982, the USCC inaugurated its satellite interconnect service on a national scale, designated as the Catholic Telecommunications Network of America, Inc. ("CTNA"). It is anticipated that CTNA will eventually provide services to all or most of the 172 Catholic dioceses in the nation, encompassing religious and educational programming, regional and national teleconferencing, transmission of data, and facsimile of the USCC's national news services to the 150 newspapers of the American Catholic press and other worthwhile users. An important factor in the establishment of the CTNA is its ability to supply programming to cable television systems throughout the nation. CTNA is an ambitious and expensive undertaking, but one which we believe will reap a harvest of benefits for the Church and society generally.

The USCC has a long-standing concern for the regulation in the public interest of cable television. It has participated in selected rulemaking proceedings before the Federal Communications Commission and has submitted statements to Congressional committees on various legislative proposals. In June, 1982, the USCC submitted written testimony to this committee in opposition to S. 2172, the Cable Telecommunications Act of 1982.

LOCAL REGULATION OF CABLE TELEVISION

The USCC believes that the present state of "unregulation" of cable television by the Federal government has fostered the healthy development of cable franchising in the local community. The imposition of federal proscriptions designed to inhibit the robust bargaining for local cable franchises is, in our view, contrary to the spirit of competition in a free marketplace.

We believe that the principles of local control and public participation in the regulation of cable service should be preserved and strengthened. The cable franchise is essentially a transaction between a cable company and the local franchising authority on behalf of the people of the community by which it is to be served and to which it is ultimately responsible. Local franchising has come to involve not only attention to technical matters but also concern for the nature and quality of the service to be provided. In recent years the Federal Communications Commission has deferred to local authorities in many areas of cable regulation. This trend toward local control has created a unique opportunity for community involvement in the regulation of communication services.

Accordingly, the USCC believes that any cable legislation enacted by Congress should limit the role of the Federal government to the following considerations: Prohibition of crossownership between cable and broadcasting; Protection of individual privacy; Provisions governing the interconnection of cable systems; Uniformity of cable technical standards governing the quality of equipment used by, and electrical interference emitting from, cable systems; and Prohibition of pornography and obscenity over cable systems.

In addition to the foregoing, any new cable legislation should invest local governments with authority over the access channels, rates, terms, conditions, content and nature of cable services provided within their jurisdiction.

COMMENTS CONCERNING S. 66

We urge rejection of S. 66 because it is contrary to the principles of cable regulation that we have outlined above. In the spirit of our overall position on cable regulation, we offer the following specific comments on S. 66:

A fundamental objection of S. 66 is its failure to reflect the primacy of the public interest standard embodied in the Communications Act of 1934, as amended, which would, among other things, implicitly make the subscribers' rights paramount to those of the cable system operator and premise a comparative renewal preference for past performance upon substantial or superior performance. Indeed, the bill emphasizes the dynamics of the marketplace as a sufficient safeguard of the public's interest. Read together Section 602 and 609 reflect a significant departure from the well-established public interest standard mentioned above, which is essential to the proper regulation of transmissions by wire and radio. Literally read, Section 602 of this bill implicitly excludes such basic public interest standards by limiting the purposes of the bill to considerations of competition, establishment of a national cable telecommunications policy and elimination of unnecessary restrictions.

Sections 606–608 of S. 66 unduly curtail the public's ability, through its representative local government, to regulate standards for local cable service. Section 607 denies consumers a voice in shaping the total cable service they receive. It limits the regulatory authority of the franchisor almost entirely to setting rates for "basic service". Basic service is defined in the bill as the mere retransmission of broadcast signals. Even this limited authority can be terminated with respect to basic services when the Federal Communications Commission in Washington decides "that there are reasonably available alternatives to basic service programming in the particular geographic area or market". Excluded from local regulation are the rates, terms, conditions, content and the nature of most other cable services including pay television, home shopping and banking, data transmission, alarm systems and other services which are likely to have a profound effect on community life. While Section 606 sets aside a certain number of channels for public access, in our judgment the dedication of such access channels would be more illusory than real. First this section excludes all systems of less than 20 channels from such requirements. Second, it places an arbitrary cap on the number of access channels that can be required in franchises covering systems of 20 or more channels and requires that existing franchises with access requirements in excess of the cap be brought into conformity with this provision at the time of renewal.[1] Third, access channels which are underused may be used by the cable operator for other services. Since no time period is specified within which access services must develop and cable operators are not required to inform the public of their availabilities the resulting uncertainity may inhibit the use of these channels. Fourth, the FCC in Washington can eliminate access requirements upon determination "that there are reasonably available alternatives for persons desiring to provide programming service to the public in a particular geographic area or market". This provision, as well as a similar provision in Section 607 (a)(2), sows the seeds for endless haggling and possible litigation looking to the reduction and perhaps eventual elimination of valuable public access facilities which would serve the needs of local citizens and voluntary organizations.

It is also noted that Section 606 designates "pubic, educational and governmental programers" as the beneficiaries of franchisor-controlled access facilities. Religious and other eleemosynary organizations are not expressly named. We believe that any access provision should make clear that facilities are to be made available to such organizations in the community.

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[1] The arbitrary cap is limited to 10 percent of "available channels" which means only those channels "actually and technically available for use by the cable operator and not subject to other use requirements imposed by the Commission".

Section 608 instructs the FCC to establish franchise fees on the basis of the cost or regulation. Thus the nature and amount of the fee could no longer be tailored to reflect local circumstances such as the value of the franchise or the scope of the service to be provided.

Section 609 of the bill provides in part that the franchisor "shall grant . . . renewal . . . if it finds . . ." (emphasis added). The use of the word "shall" could reasonably be read to limit the discretion of the franchisor and to shift the burden to the franchisor to establish that no renewal is warranted, rather than compelling the cable operator to establish its fitness for renewal. Thus read this section creates a renewal expectancy on the part of the cable operator that is, in former Senator Cannon's words in commenting on the exact same provisions in S. 2172, "a virtual endless monopoly by current incumbents". We recognize that the cable operator is entitled to some renewal expectancy, but this bill goes too far in that direction. Indeed it also fails to require what is in our view a central objective in the regulation of cable and other forms of telecommunications, i.e. superior or substantial performance by the cable system operator.

In sum, these provisions in Section 609 severely limit the public's bargaining power to seek the best possible service for the local community and correspondingly give the cable industry a competitive edge in the initial bargaining phase with franchisors and in the renewal of the existing franchises. Cable operators are effectively shielded from competition which directly benefits the public. This protection enhances cable's position to enter putative competition with other presently emerging technologies which have a less well defined public accountability. The trade off of public for purely private interests is unacceptable.

Finally, section 7 of the bill, which is an amendment to the Communications Act separate from the cable proposal, creates a presumption that proposed new and additional services are in the public interest "whenever the Commission finds that said services are technically feasible without causing significant technical degradation to or interference with radio transmissions by other licensees." By creating a presumption of serving the public interest in favor of new or additional services, we are concerned that this provision may inadvertently facilitate the invasion by commerical users of frequencies dedicated to educational uses.

Under present regulations, frequencies in the 2000-2690 MHz bands are dedicated for educational uses by Instructional Television Fixed Station ("ITFS") licenses.[2]

CONCLUSION

To summarize, we urge rejection of S. 66. If new cable legislation is to be enacted we believe that it should limit Federal regulation and foster local control and public participation in cable regulation. However if legislation incorporates a strong Federal role in cable television, then it is essential that the public interest standard be retained as the principle by which cable television is regulated.

In conclusion we note that in his introductory remarks to S. 66 Senator Goldwater stated that negotiations were underway between the National League of Cities ("NLC") and the National Cable Television Association ("NCTA"). He indicated that S. 66 might be amended to reflect some or all of the results of these talks. We wish to alert the Committee to the fact that public groups have been excluded from these sessions and that private arrangements between the NLC and the NCTA do not necessarily reflect the needs or concerns of the public and non-profit organizations within the communities of service.

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[2] An ITFS license may only be issued to "an institutional or governmental organization engaged in the formal education of enrolled students or to a nonprofit organization formed for the purpose of providing instructional television material to such institutional or governmental organization * * *." 47 C.F.R. § 74.932. Largely because of a paucity of funds, ITFS has in the past been somewhat slow in developing but in recent years has experienced and, indications are, will continue to experience accelerated development. It is, therefore, disconcerting that there are presently before the Commission at least two proposals by commercial users to invade the ITFS frequencies and permit their use by commercial operators. The USCC has consistently opposed an erosion or reallocaton of frequencies presently dedicated to ITFS use and has filed comments urging rejection of all such proposals. We, therefore, oppose Section 7 in its present form. In addition to the foregoing, we question the need for this legislative initiative. Our reading of the Communications Act of 1934, as amended, indicates that the Commission already has amply power to encourage and foster new and additional uses of the spectrum under its experimental and developmental authority. See, 47 U.S.C. §§ 151, 154(i) and 303; Network Project v. F.C.C., 511 F. 2d 786 (D.C. Cir. 1975). In any event, if this legislation does move forward, we urge the incorporation of adequate safeguards to protect ITFS frequencies against encroachment by commercial operators. Such safeguards are especially in the public interest because the frequencies allocated to ITFS use are the only portions of the spectrum now dedicated to serving the altruistic purpose of fostering education.

Statement of the National Association of Regulatory Utility Commissioners

This Statement is submitted for the record in connection with the hearings of the Senate Committee on Commerce, Science and Transportation's Subcommittee on Communications on S. 66, held on February 16–17, 1983.

The NARUC is a quasi-governmental, non-profit organization, founded in 1889. Within our membership are the government agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands which have the authority to regulate public utilities and common carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of public regulation in America.

The members of the NARUC generally agree that the current regulatory environment in which the cable telecommunications industry operates should be clarified. Cable is a hybrid medium which is not addressed in the Communications Act of 1934. Historically, the Federal Communications Commission (FCC) has treated cable as akin to broadcasting rather than common carriage. Likewise, Federal courts have for the most part defined the FCC's jurisdiction over cable based on Title III of the Communications Act, dealing with broadcasting, rather than under Title II, which addresses common carrier regulation. On the other hand, where cable is used for common carrier services such as transmission of data, the Federal courts have recognized the States' authority under Title II to regulate the rates for such services.[1] Clearly, congressional action is the most efficient means to resolve this jurisdictional uncertainty.

We are also keenly aware that congressional silence on the cable question has provided time for this medium to begin to reveal its potential impact on our lives. Cable telecommunications is a rapidly evolving technology with the capacity to provide a wide variety of one- and two-way communications services to the public. Cable may well be considered an essential service in the future. Any legitimate regulatory framework for cable must therefore be flexible enough to assure broad public access—at both the programing and subscriber levels—to what is usually a monopoly-provided service, at rates that are just and reasonable.

With these principles in mind, the members of the NARUC wish to express their strong opposition to enactment of S. 66. This legislation offers no semblance of a regulatory scheme founded on protection of cable consumers. It would virtually eliminate State and local regulatory authority over cable telecommunications, replacing it with limited FCC regulation or *no* regulation at all. In the name of granting the cable industry "equal treatment" vis-a-vis other providers of telecommunications services,[2] the bill's drafters have ignored those aspects of cable which distinguish it from other broadcast media and which dictate that differing regulatory standards should apply.

Outlined below are the NARUC's specific objections to S. 66 and proposed corrective amendments.

SCOPE OF FEDERAL AND STATE JURISDICTION

The uniquely local character of cable service provision via the franchise mechanism, as well as the previously cited need for flexible regulation as the medium continues to evolve, present compelling reasons why Congress should preserve primary authority over cable telecommunications regulation at the State and local level. It is our strong belief that the public interest is best served when decisions materially affecting the quality of citizens' lives are made by officials who are easily accessible to those citizens. State and local regulators are in a far better position to be knowledgeable about local conditions and to balance competing interests involved in cable regulatory decisions than is the FCC. Federal jurisdiction should be limited to those interstate matters which are beyond effective State regulation.

The division of cable regulatory responsibilities spelled out in S. 66 bears no relation to this philosophy of government. Although most of the bill's provisions would impact upon the jurisdictional issue, S. 66 contains two sections which expressly delineate this division of Federal-State responsibility. A new section 604 proposed by the bill for inclusion in the 1934 Communications Act provides that: (1) the FCC would have jurisdiction over "broadband telecommunications" in accordance with provisions of the Act and other applicable provisions of law; and (2) States and their political subdivisions cannot be absolutely barred from awarding cable franchises. In addition, Section 2 of the bill declares that the Federal government has exclusive jurisdiction over all cable matters except as specifically provided in the Cable Telecommunications Act and that all State or local laws conflicting with this exclusive grant of Federal jurisdiction are null and void as of the date of the bill's enactment.

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[1] *See National Association of Regulatory Utility Commissioners v. FCC,* 533 F.2d 601 (D.C. Cir. 1976).

[2] See Section 606(3) of S. 66.

Under these provisions of S. 66, State and local authority over cable is expressly reserved only insofar as the ultimate franchise award decision is concerned. Since other sections of the bill would severely restrict the States' ability to specify the terms under which the franchise is granted, even this reservation of authority is rendered essentially meaningless. The NARUC believes it is imperative that Congress explicitly grant to States authority over all substantive matters concerning cable telecommunications which are not chiefly interstate in character. At minimum, S. 66's jurisdictional provisions should include an affirmative statement that State or local governments may continue to exercise authority over cable systems to the extent that their actions are consistent with Federal laws and regulations.

Additionally, the NARUC believes that Section 606 should state clearly that nothing in the Cable Telecommunications Act is to be construed as limiting the States' authority over intrastate common carrier communications service, as provided under Title II of the 1934 Act.[3]

OWNERSHIP AND CONTROL OF CABLE SYSTEMS

Section 605 of S. 66, governing cable system ownership and control, contains a serious limitation on regulation of this area: neither State nor Federal authorities would be permitted to bar a party from owning a cable system on the ground that the party already owns other media interests. An appropriate regulatory framework for the cable industry clearly should have as one of its central aims the encouragement of free and diverse expression. In light of this goal, the NARUC questions the wisdom of absolutely prohibiting ownership restrictions which are grounded on a potential cable owner's control of other public information sources. Accordingly, we request that Section 605 be amended to eliminate this absolute prohibition with respect to State authority.[4]

We also object to language in Section 605 which would require State and local governments to pay no less than full market value for acquiring an ownership interest in a cable system. This is a completely unnecessary duplication of protections provided by the U.S. Constitution (as well as in the State constitutions), which forbids the taking of property without just compensation. Its inclusion in S. 66 tends to cast unwarranted aspersions on the willingness of States and localities to abide by this constitutional precept. Hence, we respectfully suggest that it be eliminated from the legislation.[5]

REGULATION OF RATES AND SERVICES

Section 607 of S. 66 governs the heart of regulatory jurisdiction over ongoing cable system operations. In our view, the governmental authority over cable which would be established by this section is manifestly inadequate to the task of effectively regulating cable rates and services.

Specifically, Section 607 would limit States and their political subdivisions to regulation of rates charged by cable operators for use of channels for so-called "basic service" or for provisions of such service to cable subscribers. Even this limited authority could be abolished at the FCC's behest if the Commission finds that there are "reasonably available alternatives" to basic service programing in the relevant area or market. Neither State nor Federal authorities would be permitted to regulate "the provision of or nature of cable services offered over a cable system." Finally, no government regulation would be authorized to regulate the provision or nature of either telecommunications facilities or services offered by or over a cable system, except for provision of basic telephone service.

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[3] These amendments to S. 66 may be made:

(1) by inserting on page 7, immediately after line 9, the following new paragraphs (3) and (4):

"(3) Notwithstanding the grant of authority to the Commission under paragraph (1) of this Section, any State or political subdivision thereof may adopt or continue in effect any law, rule, regulation, order or standard affecting cable systems which is not inconsistent with the provisions of this Act, with other Federal laws, or with rules and orders adopted pursuant thereto.

(4) Nothing in this Act shall be construed as limiting the jurisdiction of the States as provided under Title II of this Act.";

and (2) by deleting Section 2, page 19, in its entirety.

[4] This amendment may be made by deleting Section 605(a)(2), pages 6-7, and by redesignating Section 605(a)(1) as Section 605(a).

[5] This amendment may be made by deleting Section 605(c), page 9, in its entirety.

Enactment of this section of S. 66 would severely circumscribe with virtually no justification the State's efforts to forge effective cable telecomunications policies. No persuasive justification has been offered by the bill's proponents as to why only basic service (defined as retransmitted broadcast signals) should be subject to government regulation, save for the fact that the cable industry desires no regulation whatsoever. Consumer deserve no less protection with respect to other cable services than is provided for basic service.

The same holds true for Section 607(b)'s total prohibition on governmental regulation of the provision or nature of cable services. Beyond the fact that this prohibition would place most ongoing cable operations beyond the scope of State regulatory authority, it would also appear even to bar establishment of service provision requirements as conditions for awarding a cable franchise. Under this provision, for example, a State or local agency could be precluded from requiring a cable franchise applicant for a highly populated area to also provide cable service to areas where profit expectations are lower.

Accordingly, we respectfully request that Section 607 be revised so as to preserve State authority over cabble or basic service rates as well as all other aspects of cable system franchises.[6]

FRANCHISE FEE CEILINGS

In keeping with our position favoring retention of broad State authority over cable systems operations, the NARUC believes that Section 608 of S. 66, which directs the FCC to establish "reasonable" ceilings for cable franchise fees paid to State and local governments, should be eliminated from the bill.

Enactment of this provision would mandate a substantial intrusion by the FCC into the conduct of States' cable regulation schemes. Franchise fees are comparable to similar taxes imposed on other regulated entities in order to reflect the value of using public rights-of-way in operating their businesses as well as the cost of regulating and otherwise overseeing the entity. Federal prescriptions regarding these fees are not more permissible than is any other usurpation of the States' taxing power.

Moreover, it is a well-known principle that consumers of a particular product, such as cable service, are, in the final analysis, the group upon which any higher costs fall. Franchise fees ultimately will be passed onto cable system subscribers, and the NARUC submits that this cost-passthrough effect will operate as a self-correcting restraint on the implementation of fees at unreasonably high levels. Any State that desires viable cable service within its borders will be forced to reckon with this reality.

We therefore respectfully request that S. 66 include no direction that FCC establish franchise fee ceilings.[7]

AUTOMATIC RENEWAL OF FRANCHISES

Section 609 of S. 66 would require State or local officials to automatically renew a cable system operator's franchise authorization, if the operator meets three general criteria outlined in Section 609(a)(1)-(3). The NARUC strongly objects to the imposition of such constraints on State/local authority over franchise renewal decisions.

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[6] These amendments may be made:

(1) by redesignating Section 607(a)(1), pages 12–14, as Section 607(a);

(2) by inserting in Section 607(a), page 12, line 21, after "provison of", the words "cable service or";

(3) by inserting in Section 607(a), page 12, line 23, after "for such", the words "cable service or";

(4) by deleting Sections 607 (a)(2) and (a)(3) in their entirety;

(5) by deleting in Section 607(b), page 13, lines 19–20 the words "and no State or political subdivision thereof, or franchising authority";

and (6) by adding on page 14 the followig new Section 607(d):

"(d) each State or political subdivisin or authorized agency thereof, or cable franchising authority, is authorized to:

(1) regulate all aspects of franchise cable systems, including but not limited to the payment of franchise fees, the prescription of franchise operating territory, the duration of franchises, and any restrictions or conditions respecting the conduct of such cable systems;

(2) establish technical service standards or regulations respecting the provisions of public access channels; and

(3) establish any other regulations deemed appropriate for the effective regulations of cable telecommunications and which are not incompatible with any other provision of this Act.".

[7] This amendment may be made by deleting Section 608, page 14, in its entirety.

States and localities have no history of abusing their discretion with respect to the renewal process. And although Section 609 of the legislation contains language declaring that the automatic renewal requirement will not preempt existing State authority to entertain competing franchise applications, this section is undeniably designed to minimize competition for cable franchises after the initial authorization is granted.

The members of the NARUC believe that the inclusion of Section 609 in S. 66 is a troubling example of unwarranted Federal encroachment upon powers properly exercised by the States and their political subdivisions. We respectfully request that this section be removed from the bill.[8]

EFFECT ON EXISTING FRANCHISE AGREEMENTS

As a final matter, the NARUC believes it is unnecessary and unwise to require existing cable franchise agreements to be rewritten within 90 days of S. 66's enactment so as to conform with the new Federal law. These contracts between State or local officials and cable companies have been negotiated in good faith by the parties and entered into voluntarily by all concerned. There is absolutely no compelling reason why existing agreements must be revised in the event that S. 66 or any other Federal cable legislation wins congressional approval.

Just as Section 606 of the Act expressly provides that existing franchise agreements which require more public access channels than mandated by that section do not have to be revised, so, too, should a savings clause be applicable to all other aspects of existing franchise agreements. Accordingly, we respectfully request that S. 66 be revised to exempt existing agreements from its scope.[9]

CONCLUSION

Cable telecommunications operations provide a public service tailored to the needs of the communities they serve. State authorities are in the best position to provide whatever government regulation is necessary to protect consumers of these services from exorbitant rates and inferior service. The NARUC firmly believes that responsibility for regulating cable operations should therefore be reserved to the States, with the exception of those interstate aspects of cable which are beyond effective State regulation. This division of regulatory responsibility between the States and the Federal government can best assure the adequate and just distribution of cable service which the public interest requires.

STATEMENT OF MORRIS TARSHIS, DIRECTOR OF THE BUREAU OF FRANCHISES OF THE CITY OF NEW YORK, CONCERNING THE CABLE TELECOMMUNICATIONS ACT OF 1983 (S. 66)

On behalf of the City of New York (the "City"), I, Morris Tarshis, Director of the Bureau of Franchises for the City, welcome this opportunity to submit these comments on S. 66. I respectfully request that these comments be made part of the record.[1]

The City has been involved in franchising and regulating cable television systems since 1965, when it authorized two companies to construct cable systems to serve the Borough of Manhattan. The City is currently in the process of negotiating franchise agreements for the remaining four Boroughs of the City—The Bronx, Brooklyn, Queens, and Staten Island. The systems to be constructed in these four Boroughs will have the potential of serving over two million households with a full array of services delivered over sophisticated broadband communications systems.

The City hopes that our comments, based on years of experience gained in cable franchising and oversight, will be useful to the Subcommittee in evaluating S. 66.

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[8] This amendment may be made by deleting Section 609, page 15, in its entirety.

[9] This amendment may be made by revising Section 4, page 39, to read as follows:

"Sec. 4. The provisions of this Act and the amendments made thereby shall take effect on the date of the enactment of this Act. In the case of any franchise agreement in effect prior to the date of the enactment of this Act, such agreement shall be deemed to be in compliance with the provisions of this Act and the amendments made thereby."

[1] I also testified and submitted comments on behalf of the City during the Subcommittee hearings in April 1982 concerning S. 2172, the cable regulatory bill introduced in the last session of Congress.

I. SUMMARY

We believe there should be a federal cable communications policy to protect the nationwide public interest. Further, we believe that the public interest can best be protected through the adoption of a set of minimum standards by the Federal Communications Commission ("FCC") that would ensure a common base of services throughout the country. Congress should establish guidelines for the FCC to follow in developing these minimum standards. We do not believe, however, that the approach taken by S. 66, which places exclusive jurisdiction in the FCC with respect to a number of cable related issues, is the appropriate means to foster a national cable communications policy.

The cable television industry is no longer in its infancy. It is therefore inappropriate to provide the types of protections inherent in the *ad hoc* system of federal preemptions created by S. 66.

Notwithstanding its current reliance on national programing, cable television's use of our streets, its ability to bring communities together through narrowcasting, and its potential to provide a myriad of public services that are unique to each location suggests to us that cable television is primarily a local communications resource. Indeed, as cale television explores more fully its market for services, it will develop an even greater local orientation.

We further believe that municipal involvement in the franchising and oversight of cable television is crucial in order to achieve important public interest goals, such as the availability of equivalent cable services to all residents throughout the franchise area, regardless of income or neighborhood characteristics. In this regard, marketplace forces alone, without effective regulation at the local or the federal level, may not necessarily produce results that benefit all members of the public. It must be understood that service to all of the residents of a community was not an issue in broadcast licensing, since the nature of broadcast service involves over-the-air signals that the FCC presumes are available for everyone to use freely. Without the involvement of local authorities in cable television, cable services will be available only to the middle and upper classes. We believe that cable services are too important to the fabric of democracy to allow this communications tool to become the exclusive province of the rich.[2]

Thus, we believe that many of the issues addressed by S. 66 in the form of federal preemptions and regulatory prohibitions should be left to local decisionmaking. Proceeding from a set of minimum federal standards, local authorities, through negotiation with cable operators, are well-qualified to judge and fashion local solutions to issues such as allocation of channel capacity to public, educational, governmental, and leased programmers; level of franchise fees; protection of subscriber privacy; technical standards; and the terms under which a municipality can acquire a cable system. The establishment of minimum federal standards in these and other areas would permit jurisdictions directly involved in and affected by cable service to achieve more rigorous protections in such matters where appropriate.

Finally, the City believes that Congress should protect the legitimate expectations of cities and cable companies that have already negotiated franchise agreements or are in the midst of the franchising process. We suggest that the Bill grandfather (1) local jurisdictions that have franchise agreements or systems in place in all or part of the jurisdiction, and (2) local jurisdictions that have issued a request for proposals or accepted cable franchise applications as of the effective date of the legislation.

The City has prepared detailed comments on each section of S. 66 and a set of those comments is appended to this testimony. In the balance of this statement, I would like to share with you some of our observations regarding cable television, which we have developed as a result of over 15 years of cable franchising and oversight activity, and to highlight some of our principal concerns regarding the Bill.

II. LOCAL JURISDICTIONS SHOULD BE ABLE TO ESTABLISH FRANCHSING STANDARDS CONSISTENT WITH FEDERAL MINIMUM STANDARDS

The City endorses the establishment of a national policy on cable television to ensure that cable television systems across the country meet certain minimum standards to protect the public interest, to permit the development of a nationwide communications system through the interconnection of local cable systems, and to encourage the continued growth of cable television. To date, uncertainty as to the boundaries of federal jurisdiction with respect to cable television has hampered the development of a sustained, wide-ranging policy on cable television at the national level. To remove this uncertainty, the City believes that Congress should enact legislation making clear that the FCC has jurisdictional authority to adopt rules and regulations in the form of minimum standards in those areas affecting the national interest in cable, as determined by Congress. In additon, the City urges Congress to adopt legislation that would permit cities to ensure that all forms of communications services, including cable television, satellite master antenna televison systems, direct broadcast satellite systems, and microwave systems, are available to all residents throughout the City, consistent with the public interest. Local authorities cannot tolerate discriminatory practices with respect to the availability of these important communications media.

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[2] It should be noted that cable service has made it possible for many subscribers to be able to receive quality broadcast signals. Indeed, in the early years of its existence, the sole purpose of cable television was to receive over-the-air signals and distribute them to those persons who were otherwise without broadcast service or who had poor quality broadcast reception.

A minimum standards approach is consistent with the concept of a "New Federalism," which teaches that local governments should decide matters affecting local affairs. Such an approach further comports with the traditional cable regulatory scheme under which there has been a careful balancing of federal and local interests. Since the inception of federal regulation over cable television, it has always been contemplated that local jurisdictions would play a key role in shaping and implementing the franchising process and in developing and enforcing franchise standards. This approach grew out of the theory that local jurisdictions, not the federal government, are in the best position to understand local needs, to perform oversight functions, and to respond to local complaints and inquiries. The consensus was that local jurisdictions should play this key role in regulation because cable television—unlike broadcast signals which are regulated by the federal government—is not a service which is available to all residents within a large geographic area on a uniform basis, and because cable uses city streets.

S. 66, as it is presently formulated, stands the traditional regulatory framework on its head. S. 66 places the locus of decisionmaking in the federal government and then forbids either the federal government or local jurisdictions to act on several fundamental issues. The rationale for federal preemption is to encourage the unhampered development of cable television in an environment that is presumed to be competitive. However, by stripping the cities of their power to negotiate franchise standards which protect the public interest, the Bill dampens the incentive of cities to award franchises to private cable operators. Thus, the Bill could have a detrimental effect on the immediate and long-term growth of the cable industry.

Furthermore, the City disagrees with what appear to be the underlying premises of S. 66: (1) that cable television is a developing industry that must be protected from local jurisdictions by the federal government, and (2) that the cable industry faces a sufficiently competitive environment such that local regulation is no longer necessary. As explained below, the facts do not bear out these propositions. Local jurisdictions must continue to be involved in the regulation of cable television to achieve such important public interest goals as the availability of cable service to all residents. Indeed, as suggested below, in order to foster the growth of cable television, and to create a truly competitive environment, Congress should make clear that local authorities have the power to license competing alternative service providers and to ensure that all residents have access to a wide variety of alternative communications services.

Cable television is no longer a fledgling industry

Cable television today is a thriving mult-billion dollar industry with favorable prospects for continued growth. In 1980, the industry's operating revenues totalled $2.2 billion, representing an increase of 23 percent over 1979 revenues.[3] The dominant forces in the industry today are affiliated with, and have access to the capital reserves of, major U.S. corporations. The complexion of the industry has changed radically since 1972, when the FCC first adopted a comprehensive set of cable television rules.[4] The industry no longer requires the protections afforded the fledgling cable business of 10 years ago.

The explosive growth of the cable industry belies the industry's claim that the regulation by local jurisdictions has been overly burdensome and must be curbed. Now that the market for cable-delivered services is expanding dramatically, particularly in urban areas, the industry is clamoring for protection from the cities. However, it is this very capacity of cable to deliver the full spectrum of broadband communications services that transforms cable television from a discretionary entertainment device into a fundamental resource which should be subject to local regulation to protect the public interest.

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[3] These figures were reported in "Facts and Figures—Cable Industry Revenues Soar 23 Percent in 1980, FCC Reports," *Cablevision*, February 15, 1982 at 73.

[4] *See Cable Television Report and Order*, 36 F.C.C.2d 143 (1972).

Local jurisdictions have legitimate interests to protect in the franchising of cable television

Local jurisdictions have a fundamental interest in and are intimately affected by cable television. Cable operators must use one of the single most valuable resources of local jurisdictions—their public streets and thoroughfares—in order to construct, operate, and maintain cable systems. Cable systems also have tremendous potential for the delivery of a broad range of public services, including municipal services, health care services, and public education. In addition, cable will expand dramatically the outlets available for local community expression and will encourage the production of locally oriented programing. With the development of sophisticated interactive services, such as home security, home banking, home shopping, opinion polling, information retrieval, and teleconferencing, cable will alter radically the manner in which local residents interact with each other, their institutions, and their local governments. Further, with the development of competition in the telephone industry, cable television designed to serve all residents in a community can become a new and effective link in the new competitive environment for telephone services, but only if the cable systems are designed to serve all residents. Given the impact which cable television has on local jurisdictions and their residents, local jurisdictions should have the flexibility to negotiate with cable operators and to formulate laws, regulations, standards, and policies for cable television, consistent with the public interest.

The precise parameters of the public interest will vary from jurisdiction to jurisdiction. The City, for example, is the acknowledged communications capital of the nation and will clearly have different communications needs than many other cities and towns. All jurisdictions should have the opportunity to negotiate for a cable system that has the capacity to meet existing and future communication needs of the area served. Congress should not preempt local jurisdictions from bargaining for the types and levels of service which best serve their individual needs.

The City's franchising experience illustrates the need for local involvement in the establishment and negotiation of franchise standards. The City is committed to the principle that equivalent cable services should be offered simultaneously to all residents of the City. We believe that, had the City not taken this position, several areas of the City would have only slim prospects for obtaining cable service. Local jurisdictions should continue to have the right to pursue such goals as equal treatment for all citizens. It is important to understand that cable television is more than an entertainment service that should be available to the rich only. Because cable television has the capacity to deliver a broad spectrum of services and to provde new paths of communication within and between communities, local public officials have an obligation to ensure that this important communications resource is available to all citizens.

Cable operators may face competition only in selected neighborhoods

It is widely acknowledged that cable operators are facing increased competition from alternative service providers. However, these alternative providers compete only on a limited basis with cable: alternative services consist primarily of entertainment programing and are usually available only in selected, wealthier neighborhoods. These alternative providers have no capacity or facilities to create or originate new programing or services; in short, they serve merely as non-creative middlemen which provide conduits for the transmission of entertainment programs intended for national distribution.

In contrast, cable systems have the capacity to offer a wide variety of programing and public and institutional services. Cable operators themselves are a source of programing, and they provide facilities for the public and others to develop programing. The City believes therefore that decisions with respect to local regulatory authority over cable television, which affect an entire franchise area, should not be based on the fact that limited alternative entertainment services may exist in selected areas of a city.

Indeed, if cable television is to continue to grow as a competitive force in the communications industry, cable television may need to be protected from the alternative service providers who would serve only the rich. These cream-skimmers threaten the economic viability of cable systems, for the very reason that these other providers have been permitted to pick and choose whom they will serve and to siphon off the wealthy subscribers. To foster the growth of cable television and to preserve the goal of equivalent services to all residents, municipalities should be able to assert regulatory authority over the competing service providers. This approach would be consistent with the public interest and would treat alternative service providers and cable operators in a similar fashion. Moreover, it would permit cities to ensure that a variety of communications services are available to all citizens, not just the chosen few. Only if persons are given the choice to receive varying types and levels of service will a truly competitive environment for both cable television and the alternative service providers exist.

Thus, the City urges the Subcommittee to consider whether this Bill should recognize expressly that local jurisdictions may regulate alternative services. We believe that such regulation would be consistent with the public interest, would encourage the continued growth of cable television, and would stimulate competition among all communications services.

In addition, the City urges Congress to amend the definition of "cable system" under Section 603(9) of the Bill. The current definition expressly exlcudes "a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management. . . ." (Emphasis supplied.) Thus, under this definition, a person or entity could form an organization to manage different apartment buildings throughout a particular franchise area and thereby exclude from franchise requirements cable facilities serving residents in those buildings. Moreover, as noted above, to ensure equal treatment of citizens and other public interest goals, the City believes that Congress should not exclude communications services facilities serving multiple unit dwellings from the definition of a "cable system," unless those facilities retransmit broadcast signals only.[5]

The Bill Should Authorize the FCC To Establish Minimum Standards Only

Given the legitimate interests of local jurisdictions in cable television, and the need for some degree of nationwide uniformity, the City respectfully suggests that the basic thrust of S. 66 should be reformulated. In order to accommodate local and national needs within the framework of federal legislation, the Bill should (1) make clear that FCC jurisdiction with respect to the matters dealt with in the Bill is *not* exclusive; (2) establish, or authorize the FCC to establish, *minimum standards* applicable to all cable systems in the nation; and (3) provide that additional standards in excess of federal minimums may be established at the local level.

The use of minimum standards that local jurisdictions may exceed if warranted is the regulatory approach adopted by New York State in its cable legislation. Under the New York statutory scheme, the state Commission on Cable Television (CCT) sets minimum standards, which are particularly useful for smaller communities in the state, and permits other communities to negotiate with cable companies realistic, albeit more rigorous, standards not inconsistent with CCT law or regulations.[6]

As described more fully in the attached Section-by-Section Analysis, the Bill addresses issues that local authorities, together with cable operators, are well-qualified to judge and resolve. In almost every circumstance, local conditions will affect the proper standards that should be applied. However, the Bill, through its preemption policy, appears to prohibit localities from asking any judgments in these areas and to impose standards that may not be suited to particular local needs.[7] Moreover, as noted earlier, the Bill should articulate clearly the ability of local authorities to regulate the cream-skimmers who pose a threat to the future of cable television.

The City has detailed its objections to specific provisions of the Bill in the Appendix attached to these comments. I would now like to highlight some of the City's principal objections that are based on the Bill's preemption policy and establishment of fixed standards.

Municipal Ownership.—A municipality should have the right to negotiate with a cable operator in a business-like manner to agree on the terms and conditions under which the municipality could own, or acquire an ownership interest in, a cable system.[8] The Bill's mandate in Section 605(c) that local jurisdictions acquire ownership interests at no less than fair market value unduly restricts franchising authorities in their negotiations. The give and take of the negotiationg process—not the federal government—should determine the price of municipal ownership.

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[5] New York State law adopts this approach. It exempts from the defintion of "cable television system" master antenna television systems which serve residents in apartment buildings under common ownership, control or management, which provide only retransmission of broadcast signals, and which provide no additional services. *See* N.Y. Exec. Law § 812(2), (6) (McKinney 1980 Supp.).

[6] See N.Y. Exec. Law § 819 (McKinney 1980 Supp.).

[7] The City recognizes that it is entirely appropriate for the FCC to have exclusive jurisdiction to determine the conditions under which foreign cable operators may do business in the United States. (See Section 605(b).)

[8] The Bill should make clear that local jurisdictions may own, construct, and operate a *new* cable system, as well as acquire an ownership interest in an existing system.

At a minimum, fair market value should not include the value of the franchise. The franchise is a privilege granted by the municipality for a specific period of time on expressely stated conditions. When that period of time expires, or otherwise ends, the privilege granted by the municipality is revoked. To require the municipality to pay for the value of the franchise would be analogous to requiring a lessor of commercial premises to pay to his lessee the value of the lease when the lease expires or is otherwise terminated. Indeed, in commercial leases, certain improvements made by the lessee become the property of the lessor, with no required payment by the lessor, when the lease expires.

Futhermore, fair market value is an inappropriate measure of payment in a number of instances. For example, a municipality should not be required to pay fair market value for the system if the cable operator has abandoned the system or otherwise failed to perform its contractual obligations.

Cross-Ownership Restrictions.—Local jurisdictions should have the right to continue in effect polices which promote diversification of control of the media. The Bill guts existing FCC rules on ownership of cable systems by other communications interests. (Section 605(a)(1).) While the City supports the underlying policies of the FCC rules, the City would not oppose the elimination of those rules, provided that the Bill would permit the City to enter into an agreement with a cable operator containing substitute ownership restrictions for diversification purposes. Congress should not hasten the trend toward concentration in the communications industry by repealing FCC ownership restrictions and, at the same time, tying the hands of local jurisdictions to act in this area.[9] In our age of information, concentration of ownership poses a significant threat to the free exchange of knowledge and ideas.

Dedication of Channel Capacity.—Franchising authorities and cable operators should be able to agree upon the channel capacity available for public, education, governmental, and leased use. Section 606 of the Bill fixes percentages of total available capacity dedicated to public, educational, and governmental purposes.[10] Section 606(f) permits cable operators in their sole discretion, to provide additional access channels. The Bill should make clear that, under Section 606, cable operators may agree to provide additional accesss channels at no charge and that the City may purchase access channel time, in addition to that agreed upon, at reduced rates which are negotiated by the City and the cable operator. The City further suggests that the Bill contain a requirement that the cable operator must make additional access channel capacity available when the initial dedicated capacity becomes fully utilized, based on a set of standards agreed upon by the operator and the City.

Regulation of Rates and Services.—Section 607(a) limits the City's rate regulatory authority to access channels and basic service. Section 603(1) defines basic service as the retransmission of broadcast signals only. This definition would prevent the City from ensuring that a wide diversity of basic services is available to subscribers. Section 607(b) and (c), which prohibit the City from regulating the nature of cable services and facilities, may also prevent the City from ensuring that an equivalent service package is available to all residents throughout the City. In addition, these provisions appear to restrict the ability of the City to negotiate with cable operators to construct state-of-the-art cable systems. This legislation should not permit cable operators to be the sole determinant of the categories of services available and the terms and conditions under which service is offered to subscribers.

Franchise Fees.—Section 608 of the Bill authorizes the FCC to establish a limitation on the amount of the franchise fee which cable operators pay to state and local jurisdictions. The Bill further provides that the limitation can only cover the cost of regulation.

The City believes that the franchise fee to be paid for the use of City streets is a matter for negotiation between the City and cable applicants. The streets of the City are held in trust for the people of the City, and are a valuable resource. The City should have the right to obtain a fair and reasonable price for their use. The federal government should not preclude the City from negotiating in good faith reasonable franchise fees from cable operators. No one questions the right of private property owners to be compensated for the use of their property. The City should not be treated differently.

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[9] It should be noted that the Bill is absolute in its prohibition against the authority of local governments to regulate ownership of cable systems. (Section 605(a)(2).) The City assumes that this provision would not prevent franchising authorities from examining the character and fitness of cable applicants to construct and maintain a cable system. The legislative history of the Bill should make this clear, if the provision is not amended.

[10] The City notes that S. 66, unlike S. 2172, does not contain a requirement that the cable operator dedicate 10 percent of available capacity for lease by independent programmers. The City assumes, therefore, that the limitations and conditions imposed by S. 66 on access channels would not apply to leased channels that are negotiated between the cable operator and the local jurisdiction.

It should be noted that other persons who use City streets for purposes similar to those of cable companies compensate the City in a fair and reasonable manner for these uses. There is no federal ceiling on this compensation. The City does not view cable companies as unique in their use of the streets, and there is no support for a distinction between the compensation paid to the City by cable companies and that paid to the City by other users of the streets.

It is difficult to understand the rationale for authorizing the FCC to adopt any type of ceilings at this particular time. Based on the FCC's experience with existing fee limitations, the FCC initiated a proceeding to consider the repeal of the restriction over three years ago. At that time, the FCC publicly stated that "there remains serious question about . . . the desirability of a federal limitation on franchise fees. . . ."[11]

Clearly, the make-up of the industry has changed dramatically since the FCC first determined to impose its fee limitations. The concept of fee ceilings grew out of a desire to protect an infant cable industry from the unreasonable demands of franchising authorities. Without such protection, it was argued, the industry would be drained of the necessary capital to ensure its growth. Today, cable is no longer in the incipient stages of its development. To be sure, the industry is still maturing. However, major U.S. corporations are now heavily involved in, and are the leading interests in, the industry. Cable no longer needs the protective barriers erected by the federal government a decade ago.

Renewal.—The Bill appears to mandate renewal of the franchise if the cable operator satisfies the standards enumerated in Section 609(a). Just as the Bill does not require municipalities to grant franchises, it should not provide for mandatory renewal of the franchise under any circumstances. In light of the rapid pace at which cable technology is advancing, renewal may be an appropriate time for local jurisdictions to negotiate for upgrading of the services and performance of the system. In addition, local jurisdictions may wish to negotiate amendments of the franchise based upon experience during the prior term. The mandatory renewal provisions would undermine the ability of local jurisdictions to achieve either of these goals.[12]

Protection of Subscriber Privacy.—The City supports the sections of the Bill dealing with theft of service and subscriber privacy. Theft of service is a particularly acute problem in urban areas, and the City welcomes legislation strengthening penalties for this crime. The City would also suggest that, to provide an even greater deterrent, the Bill should require that any person found liable for invasion of privacy either as a result of theft of service or otherwise, should be required to pay attorneys' fees to the aggrieved party and that any person convicted of theft of service should be required to pay damages to the aggrieved party.

Effective Date of the Act.—Many cities and towns are in the process of negotiating franchise agreements or have only recently completed franchise negotiations. In the interests of fairness, Congress should not rewrite the rules of franchising in midstream. In the City, for example, we are in the process of finalizing franchise agreements for the four Boroughs outside of Manhattan.

These agreements took over a year to negotiate and required the City to commit substantial City staff time and resources. It would be a travesty and a waste of taxpayer resources, if federal legislation were to require the City to begin its franchising process all over again. Accordingly, we suggest that the Bill contain a grandfathering provision that would protect the cities' and franchisees' legitimate expectations about the franchising process. The City suggests that such a provision should exempt from compliance with the legislation (1) any local jurisdiction which had issued a request for proposals or accepted applications for a cable franchise as of the date of enactment of the legislation and (2) any local jurisdiction which has in place a franchise agreement or a cable system in all or part of the jurisdiction as of the date of enactment of the legislation.

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[11] 71 F.C.C.2d 569 at ¶34 (1979).

[12] The interplay between the requirement that a local jurisdiction grant renewal if certain conditions are satisfied and the provision allowing jurisdictions to accept competing applications and award multiple franchises is unclear. In many cities, because of their size or demographics, only one cable system is economically feasible. The fact that such cities may be authorized to award more than one franchise is therefore meaningless, since no additional cable operators would apply to overbuild in the city. Thus, under the mandatory renewal provisions, such cities would be hostage to a single cable company without any power to negotiate an upgrade of the cable system.

III. CONCLUSION

The City believes that the current philosophy of the Bill—federal preemption and substitution of federal policy for local decisionmaking—presents fundamental, practical difficulties for the effective regulation of cable television in the public interest. Moreover, because cities are prevented from protecting their residents through negotiations with cable operators, such an approach removes the incentive of cities to franchise private operators. Cable television is an essentially local service to local residents using local streets and pathways. When the needs and interests of local residents have not been considered or protected, or when a problem arises with respect to cable service, subscribers contact their local authorities, not the federal government. Local authorities are in the best position to receive and take action on subscriber complaints, to ensure that cable systems comply with applicable standards, and to establish those standards. To place all decisionmaking in the areas dealt with in the Bill within the exclusive province of the federal government would play havoc with the regulatory framework that is most appropriate for cable television. The City urges that, as Congress decides to take action in this area, it do so by adopting minimum standards that would not interfere with the ability of local jurisdictions to negotiate terms and conditions for the protection of their residents and institutions. Under this approach, Congress can take affirmative steps to ensure that the rights of the people are not subordinated to the interests of a healthy and growing cable industry.

APPENDIX

SECTION-BY-SECTION ANALYSIS BY THE CITY OF NEW YORK OF PROPOSED CABLE TELECOMMUNICATIONS ACT OF 1983 (S. 66)

The City of New York submits the detailed comments set forth below concerning the substantive provisions of S. 66. The City would be pleased to discuss its comments further with members of the Committee and the Subcommittee, and their staffs, and Committee and Subcommittee staff, as appropriate, and to submit suggestions for specific language changes in the Bill.

General

1. The City endorses the proposition that there should be a federal cable communications policy to ensure some level of commonality among cable systems and to protect the nationwide public interest. In particular, the City supports the principle that there should be dedicated capacity for public, educational, and governmental uses on all cable systems. However, the City believes that national policy goals can best be achieved through the adoption of minimum standards by the FCC—not by placing exclusive jurisdiction in the FCC with respect to many cable matters. The establishment of minimum standards would permit jurisdictions directly involved in and affected by cable service to achieve more rigorous protections where appropriate and, at the same time, would ensure the protection of subscribers.

(a) The only area dealt with in the Bill that is an appropriate matter for exclusive federal jurisdiction concerns the terms on which foreign operators may do business in the United States. (§ 605(b).)

2. The Bill is premised on the notion that cable is still an infant industry in the incipient stages of its development. The facts do not bear out this proposition. The dominant forces in the industry today are affiliated with major U.S. corporations. In recent years, the FCC has taken affirmative action to lessen its regulatory role with respect to cable in part because of the industry's explosive growth over the past decade. It seems anomalous that Congress would now direct the FCC to take a more active role in some matters, thereby substituting federal regulation for the proper give and take between cable operators and the jurisdictions whose streets are being used to provide services to the residents and institutions within those jurisdictions.

3. The Bill is premised on the notion that there is no longer any need or justification for the regulation of cable television, because cable operators are facing competition from alternative service providers. While competition does exist, alternative service providers compete with cable only on a limited basis. Other service providers typically do not have the channel capacity of cable systems; they offer only limited services, which are confined primarily to entertainment programing; and they market their services principally in the wealthier neighborhoods of a city. Thus, competition to cable is not widespread, especially in urban areas where there is a

diverse mix of economic groups. Moreover, local jurisdictions have a variety of legitimate local interests to protect in the franchising of cable television. Rather than prevent local jurisdictions from pursuing these legitimate interests in order to free cable from local regulation that does not cover alternative service providers, the City urges Congress to authorize cities to assert regulatory authority over alternative services, to be exercised in the public interest. This approach would treat cable operators and alternative service providers in a similar manner and, at the same time, would enable cities to protect and advance the public interest.

Section 603. Definitions

The City's comments on particular definitions are made within the context of the specific provisions to which the definitions are most relevant.

Section 604. Statement of authority

1. Section 604 must be read in conjunction with section 2 of the Bill which places exclusive jurisdiction in the FCC over matters dealt with in the Bill and nullifies existing state and local laws inconsistent with the FCC's exclusive jurisdiction. While Section 604 recognizes the right of local governments to award cable franchises, Section 2 appears to limit severely the flexibility which local jurisdictions would have to negotiate franchise terms with the cable applicant. The City is opposed to a policy of exclusive jurisdiction and believes that local authorities should be able to negotiate stricter standards than provided in the Bill, if such standards are reasonable and justified by local conditions.

2. The City also believes that the Bill should not nullify existing state and local laws governing the relationship between franchising authorities and cable operators. The Bill's provisions are patently unfair to local franchising authorities that have engaged in good-faith negotiations and, in reliance thereon, have granted or are in the process of granting a franchise subject to the terms and conditions agreed upon by the parties. (*See also*, comments on effective date of the Bill, at page 11, below.)

Section 605. Ownership and control of cable systems

1. The City opposes the prohibition on adoption of cross-ownership standards by the FCC and state and local authorities. (§ 605(a)(1), (2).) Especially since the Bill repeats existing FCC cross-ownership rules, local authorities should have the right to choose whether they wise to continue a policy that promotes competition and diversification of control of the media. There is already concentration in the broadcast industry. Fewer and fewer big cities today have more than one or two major newspapers. The cable industry itself is increasingly dominated by a small group of multiple systems operators. The Bill should not hasten the trend towards concentration in communications by eliminating existing FCC restrictions and, at the same time, barring local authorities from adopting substitute cross-ownership rules.

(a) Although the prohibition on local regulation of system ownership seems to be absolute in §605(a)(2), the City assumes that this provision would allow franchising authorities to review the qualifications, character, and fitness of cable applicants to own, construct, operate, and maintain a cable system. The legislative history of the Bill should make this clear.

2. The City is opposed to the requirement that local authorities may acquire an ownership interest in a cable system only at fair market value.

(a) A municipality should have the right to negotiate in a business-like manner with a cable operator and agree on the terms and conditions under which the municipality could acquire an ownership interest in the cable system.

(b) There are circumstances in which it may be inappropriate for the municipality to pay an amount equivalent to some notion of "fair market value." For example, if the system is abandoned by the cable operator or the cable operator commits a material breach of his franchise contract or materially violates a provision of the cable ordinance, the municipality should not be required to pay the operator fair market value for the system.

(c) Furthermore, fair market value should in no event include the value of the franchise. The municipality should not be required to pay for a privilege which it has granted to the cable operator. In addition, the payment of the value of the franchise may present legal problems for some municipalities. For example, the City is subject to a Charter provision prohibiting it from compensating a franchisee for the value of the franchise.

(d) In any event, the Bill raises far more questions that it answers. For example, can franchising authorities and cable operators define fair market value to be a specific price set forth in the franchise agreement? How does the concept of fair market value apply to a joint venture situation in which part of the municipality's contribution to the joint venture may be access to and use of city streets? Undoubtedly, the

Bill's prohibition would spawn countless legal challenges as to what constitutes payment of "fair market value" by a municipality.

3. The Bill should make clear that local authorities may own, construct, and operate a *new* cable system, as well as acquire an ownership interest in an existing system.

4. The City does not believe it is necessary to include in the Bill a provision prohibiting local control over programing except on the public, educational, and governmental channels. (§ 605(c).) This provision is far too restrictive and might be interpreted to prohibit local jurisdictions from taking any actions which may affect programing. It also raises constitutional questions. For example, certainly the Bill could not constitutionally prohibit the City from leasing a channel, in addition to channel expressly dedicated to government use, for the distribution of programing or services by City agencies.

The Constitution provides protection against unreasonable governmental interference with freedom of speech. Of course, local jurisdictions would operate their systems and structure their ownership arrangements in a manner that would be consistent with the First Amendment. Accordingly, the last sentence of Section 605(c) seems to be unnecessary.

Section 606. Access channels

1. The City supports the proposition that cable operators should allocate a portion of the system's capacity to public, educational, and governmental uses. The availability of channel time programmed by public, educational, and governmental entities permits the development of programing in the public interest.

2. The City also supports the provision that cable operators may provide additional access channels. The legislative history should make clear that additional access channels may be agreed upon by the cable operator and the franchising authority. The City also suggests that the Bill should require cable operators to make additional access channel capacity available when the initial dedicated capacity becomes fully utilized on the basis of a set of standards to be agreed upon by the operator and the local jurisdiction.

3. The City notes that the Bill does not provide for dedication of leased channel capacity. The City presumes, therefore, that channel capacity available for lease may be negotiated by the cable operator and the franchising authority and is not subject to any restrictions set forth in the Bill.

4. The cable operator's obligation to provide access channels should not cease because there may exist—in the minds of particular commissioners at a given time—alternatives to the cable system. Access channel users may build up an audience or a subscriber following for their services on the cable system. Users should not then be denied access to the cable system merely because there is evidence of competition from other service providers. (See § 606(d)(1), (2).) This provision would discourage, rather than promote, effective competition.

5. In any event, it should be recognized that the existence of alternative services is not a realistic measure of their availability to subscribers. Once a subscriber obtains cable service, that subscriber generally resists paying another set of fees for a different type of service (*e.g.*, satellite services) that offers similar types of programing. Therefore, denial of access to the cable system may deprive subscribers of receiving the type of programing offered by that access user.

6. The City recognizes that all reasonable steps should be taken to avoid waste of resources on the cable system. However, the cable operator should not have the option of requiring that programing by public, educational, and governmental users appear on a single channel until there is a demand for a particular type of channel on a full-time basis. (See § 606(e)(2).)

(a) Subscribers should be able to identify a particular channel with a particular type of use. It is easier to attract and retain an audience if, for example, subscribers know that, on Channel A, programing by the municipal government will appear, and on Channel B, programing by public access users will appear.

(b) Some of the uses which the bill lumps together may be incompatible with each other and should not appear on the same channel. For example, the local government should not have to share a channel with access users, which may be providing adult programing.

(c) There is a risk in permitting dedicated channels to be used for other purposes until such time as the channels are needed for their dedicated use. During the interim period, the cable operator may schedule programs such that it is impractical or politically infeasible to recapture the channel time.

Section 607. Regulation of rates and services

1. The City supports § 607(a) which permits local authorities to regulate rates for the use or sale of channel time for the provision of basic service and public, educational, and governmental services, and the rates charged to subscribers for such services. It should be made clear, however, that local authorities may expect cable operators to provide such channel time at no charge.

2. With respect to basic service regulation, the City objects to the definition of "basic service" in § 603(1) as the retransmission of broadcast signals only. This limitation severely restricts the ability of local authorities to provide that a wide range of basic services is available to a broad spectrum of subscribers at a reasonable price.

3. The City suggests that § 607(a)(1) be modified to permit local authorities to regulate rates charged leased users to ensure (1) that cable operators do not charge excessive rates which would discourage the use of leased capacity, and (2) that leased rates are applied on a nondiscriminatory basis.

4. The City's rate-making authority should not cease just because the FCC may determine that there are reasonably available alternatives to basic service. As pointed out with respect to a similar provision relieving operators of the obligation to provide access channels (paragraph 4 at p. 6), the existence of other service providers does not indicate the availability of equivalent services to cable subscribers or the ability of basic service providers to gain access to subscribers. Moreover, in making its determination, the FCC would be looking at a snapshot of existing conditions, which could very well change within a short period of time. (Section 607(a)(2).)

5. Congress should not strip local authorities of their ability to negotiate with cable operators regarding the nature of cable service and telecommunications facilities provided. First, local authorities should have the ability to ensure that cable operators treat all subscribers within a franchise area in a nondiscriminatory manner. Second, local authorities should be able to ensure that cable operators build a modern cable system consistent with state-of-the-art technology and update that system. In this regard, local authorities should be able to establish technical performance standards for the system. Thus, local authorities may necessarily have to address the issue of the nature of services and facilities provided. Congress should not place sole discretion in cable operators to determine the manner in which cable services will be offered to subscribers. The City believes it would be contrary to the public interest to preclude municipalities from pursuing valid public purposes in formulating service standards for the benefit and protection of subscribers. (Section 607(b), (c).)

Section 608. Franchise fees

1. The City opposes the provision directing the FCC to establish ceilings on franchise fees paid to local authorities. The streets of the City are a valuable resource, and the City should have a right to obtain a fair and reasonable price for their use. The federal government should not preclude cities from negotiating reasonable franchise fees from cable operators.

2. The streets of the City are held in trust for the people of the City. Just as private property owners are entitled to receive fair compensation for the use of their property, so are the people of the City entitled to receive fair compensation for the use of their streets. Other users of the streets pay a fair and reasonable price to the city for their use. There is no federal limit on this price. It is not inappropriate for cable companies to pay compensation to the City on a similar basis as other users of the streets.

3. This Bill comes at a time when the FCC has publicly stated that it is considering repeal of its fee restrictions because there are "serious questions about . . . the desirability of a federal limitation on franchise fees. . . ." 71 F.C.C. 2d 569, 584 at ¶34 (1979). Notwithstanding the FCC's statement, the Bill seems to require the FCC to maintain a fee ceiling in perpetuity and to adjust the ceiling from time to time.

4. The FCC fee limitation was adopted when the cable industry was in its infancy. It is no longer necessary to protect the industry to ensure that it has the necessary development capital. today, cable is a maturing industry without need for protective barriers imposed by the federal government.

5. The Bill requires that the FCC fix the ceiling so as to cover only the cost of regulation. The City urges that, if Congress does adopt § 608 or a similar franchise fee provision, the Bill, or the legislative history, make clear that (a) the fee may also include other appropriate local activities related to the cable system; and (b) local jurisdictions may continue to negotiate exta-service packages that will not be considered part of, or charged against, the franchise fee.

Section 609. Renewals and extensions

1. Local jurisdictions should have the right to determine whether or not to renew a franchise and the terms and conditions under which renewal may occur. Cable technology is constantly changing, and the point at which renewal is being considered may be the most appropriate time to negotite the upgrade of the services and performance of the system. For the federal government to mandate renewal if certain federal standards are met undermines the ability of local governments to negotiate for such upgrading and other modifications that may be appropriate in light of the experience during the initial term of the franchise. Federally-mandated renewal standards also raise jurisdictional questions, since local authorities have jurisdiction over the use of city streets. The federal government does not require local authorities to grant a cable franchise. Similarly, the federal government should not mandate renewal of a franchise.

Section 610. Protection of subscriber privacy

1. The City supports the protection of subscribers' right to privacy and the strengthening of penalties for theft of service. However, the City does not believe that the federal government should have exclusive jurisdiction to establish rules and regulations governing subscriber privacy. The City believes that it is in the best interest of subscribers to permit local authorities to prescribe additional privacy requirements not inconsistent with any federal standard. For exmaple, the City may wish to require its franchise to develop a privacy protection plan setting forth the procedures to ensure the confidentiality of individually identifiable subscriber information. Section 610 should not preclude the City from doing this because of federal preemption.

2. The City suggests that § 610 may be overly restrictive with respect to the ability of local jurisdictions to regulate their cable systems. A municipality may wish to conduct an audit of its system to determine whether the operator has been paying the proper amounts in franchise fees. It appears that § 610 would prohibit the municipality from obtaining the necessary documentation to conduct the audit. The Bill should make clear that local jurisdictions may obtain the information required to perform their regulatory functions.

3. The City suggests that the Bill should require persons found liable for invasion of privacy to pay attorneys' fees to the aggrieved party and persons found guilty of theft of service to pay damages to the aggrieved party.

Section 611. Criminal and civil liability

The City suggests that this Section's exemption of cable operators from certain liability should be based on the operator's role in program production, not on the particular channel over which a program is distributed. Specifically, § 611 should be modified to make clear that cable operators or their affiliates may incur liability if they have produced, or have exercised editorial control over, programs distributed on a public, educational, or governmental channel. However, the liability exemption would continue to apply if the cable operator assisted access users in technical production aspects of access programs. Section 611 should not preclude cable operators from assuming by agreement greater liability than that permitted by the Bill.

Exclusive jurisdiction

See general comments and comments on Section 604 at pp. 1; 3.

New and additional services

1. The City supports the principle that the FCC's procedures for authorization of new communications services should be streamlined. However, the City does not believe that the FCC should be restricted to technical considerations only in determining whether to grant such authorizations. The City further believes that, to the extent necessary to protect the public interest, and consistent with traditional theories of municipal powers, local jurisdictions should also be able to establish appropriate guidelines for the operation of new communications services within their boundaries.

Effective date

1. In the interest of fairness, local jurisdictions, which have already begun or concluded their franchising process in reliance on the existing regulatory framework, should not be required to comply with the terms of this Bill. The City, for example, began its franchising process in some Boroughs over four years ago and has been engaged in franchising negotiations for over a year. Thus, the City has invested substantial time and resources in cable franchising. The City is now approaching the final award of the franchises. It would be a travesty if the Bill were to require the

City to start over again because the rules of franchising were changed in the middle of the process. Accordingly, the City suggests that the Bill exempt from compliance (1) local jurisdictions which have either issued a request for cable television proposals or accepted applications for cable franchises as of the effective date of the legislation, and (2) local jurisdictions which have franchise agreements or cable systems in place in all or part of the jurisdiction.

JOINT STATEMENT OF FRONT ROYAL, VA.; RICHMOND, IND.; AND SHREWSBURY ELECTRIC LIGHT PLANT OF SHREWSBURY, MASS.

My name is Joseph Van Eaton, an attorney with the law firm of Spiegel & McDiarmid. I am submitting these comments on S. 66 on behalf of the Town of Front Royal, Virginia, the City of Richmond, Indiana and the Shrewsbury Electric Light Plant of the Town of Shrewsbury, Massachusetts.

The Town of Front Royal, Virginia is a community of 11,000, located about 70 miles from Washington, D.C. but outside all TV markets. The City of Richmond, Indiana is a community of 40,000 people located about 40 miles from Dayton, Ohio and 70 miles from Indianapolis. It is also outside all TV markets. Front Royal and Richmond, like the vast majority of this nation's communities, are now served by cable systems with limited channel capacity, systems which are not "state of the art." [1] Front Royal is served by a 12-channel system. Richmond is served by a system with 20-channel capacity.

The franchise in Front Royal will expire on April 7, 1983, and will then be in force on a year-to-year basis. In the near future, therefore, Front Royal will enter into the refranchising process. It must be able to ensure that a franchisee will be able to provide a system which will meet community needs for the next decade. The franchise in Richmond expires in 1993. In the meantime, Richmond must ensure that the franchise provides adequate service to the community.

The Shrewsbury Electric Light Plant ("Shrewsbury Light") is an agency of the Town of Shrewsbury, Massachusetts, a community of over 20,000. For 70 years, Shrewsbury Light has operated the Town's municipally-owned light plant. It has consistently provided electric service to Shrewsbury's citizens at prices below that offered by privately-owned electric companies in the area. In 1982, Shrewsbury Light was awarded a provisional license to provide cable service to the Town. Consistent with its history, Shrewsbury Light has promised to build a system technically superior to that being offered in comparable communities, and promised to provide service at lower rates and in a manner more responsive to community needs. Shrewsbury Light must now deliver on those promises.

Front Royal, Richmond and Shrewsbury Light fear that S. 66 may impede or even prevent development of cable's potential in their communities. This is largely because of two major flaws in the bill. First, it imposes a federal structure on the cable industry which, among other things, limits the manner in which cable companies can compete. Second, it takes power away from and creates confusion concerning the power of local authorities to regulate cable systems—even cable systems they own. If the bill passes, it may be difficult for Front Royal to refranchise effectively and difficult for Richmond's citizens to obtain quality cable service. Some of the advantages associated with municipal ownership may be eliminated.

Front Royal, Richmond and Shrewsbury Light believe that in considering the proper role of the federal government in cable, the Committee should keep a number of factors in mind.

Local, not federal, interests are most directly affected by cable television. It is local broadcast and non-broadcast cable services which are least likely to be duplicated by alternate technologies. It is local streets and right of ways which are burdened by cable operators. These interests ought to be protected.

Congress should not create a new and costly federal bureaucratic process for resolving local problems. This bill would force localities to come to Washington to argue before a federal official that access channels are needed in their community (Section 606) or that rate regulation of basic services is appropriate (Section 607).

Cable is not just expanded television. Front Royal, Richmond and Shrewsbury Light own and operate municipal utility systems. They are extremely interested in developing cable's potential as a conduit over which electric load can be managed. Load management can reduce electric rates, reduce the need for capital investment in large plants, and reduce reliance on fossil fuels. Thus, there is an important public interest in effective load management via cable. Cable can also be used in these communities to link people who are otherwise cut off from much of the flow of community life. Cable can be used to provide greater security to residents through improved security and alarm services. Cable may provide a conduit through which municipal services can be improved and delivered at less cost.

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[1] According to the 1981–82 Edition of the Television Factbook, the majority of cable systems (2,642) offer 6–12 channels. Only 763 of roughly 4,637 systems offer over 30 channels.

Cable is a unique conduit for the community. It has an enormous potential which has yet to be developed. Where there is a private owner, as in Front Royal and Richmond, this potential will be impeded by S. 66, because the bill deprives localities of power to regulate for beneficial development. Sec. 607, for example, might prevent localities from insuring that alternate providers have access to the cable system. Under Section 606(c) communities served by low-capacity cable systems may be denied any public, educational or governmental access channels. This is because many channels are not "available" as defined in the bill; they may be occupied by stations carried under the FCC's "must carry" rules. Operation of municipally-owned systems in the public interest may also be impeded. One reason the Town of Shrewsbury opted for a municipal system was that it felt such a system would provide more responsive programing. Sec. 605(c), however, might prevent Shrewsbury Light (or an appointed board) from programing the system in the public interest. Municipal ownership provides an important alternative to private ownership. It should not in any way be discouraged or hampered. Fear of censorship is misplaced. Indeed, Shrewsbury Light is committed to allowing diverse voice access to the cable. There is no guarantee, under this bill, that private companies will do so.

Although only one cable company is likely to serve in each area, and local regulation is therefore essential, intense competition may occur at the time of franchising and at the time of refranchising. The importance of this franchising competition has been recognized explicitly by the FCC. In its Staff Report, "FCC Policy on Cable Ownership," at p. 98 it stated that franchise competition forces cable operators to offer attractive and efficient service. S. 66 appears to hamper franchise competition by limiting the ability of cities to require operators to provide promised access channels (Section 605) or services (Section 607).

There is no need to limit local regulation to save the industry. The cable industry has prospered under regulation by local governments. According to the 1981–82 Edition of the Television Factbook, the industry has grown from 14 million subscribers as of January 1, 1979 to roughly 21 million subscribers at the start of 1982. Moreover, the December 27, 1982 issue of Cablevision reported that cable had outperformed other service industries despite the recession.

Cable companies need not be sheltered from local government in order to compete with alternative technologies. Henry Morneault, vice president of Chemical Bank's entertainment industries group, has stated that alternate technologies will not diminish cable's profit potential. To the contrary, subscription television's troubles indicate that it will have difficulty surviving in cable markets. Some authorities predict that direct broadcast satellites will do best where neither STV or cable is located.

Finally, there is little reason to protect companies from local government in order to tame franchise bids. Some companies claim to be in a financial bind because they have promised more than they can deliver to obtain franchises in large urban areas. Even if companies are overpromising, Congress should not protect the industry from itself. There is, further, no reason to suppose overpromising will be stopped by hampering local regulation of cable. Indeed, some companies may promise the moon because they believe that Congress or the courts will relieve them from their obligations. S. 66, which weakens the local franchising process, will only aggravate the problem, The way to stop overpromising is to leave it clear that cable companies must live up to the terms of their franchise.

Front Royal, Richmond and Shrewsbury Light oppose the bill because it would hamper worthwhile local regulation, it would diminish franchise and refranchising competition, and it would frustrate the realization of cable's potential.

We attach a section-by-section criticism of S. 66.

SECTION ANALYSIS OF EFFECT OF S. 66 ON CABLE

Front Royal, Richmond and Shrewsbury Light believe the bill, if enacted, will adversely affect communities and the development of cable as follows:

1. It will restrict competition for the initial franchise.
2. It will prevent competition at the time of refranchising.
3. It may prevent a municipality from enforcing franchise provisions.
4. It may require a municipality to pay an unreasonable amount for an established cable system.

5. It may discourage municipal ownership of cable.
6. It permits companies to utilize rights of way without reasonable compensation.
7. It will diminish and confuse any state and local regulation which states and municipal authorities should have the right to impose on local cable systems.

1. RESTRICTING COMPETITION FOR THE INITIAL FRANCHISE

Sec. 606 sets limits on the percentage of channels which a cable operator can be required to provide for access and would apparently prohibit localities from providing for commercial leased access channels. It permits a cable operator to provide additional access channels, but in his "sole discretion;" it is not clear that a community would have an enforceable right to demand a cable operator continue to provide such additional channels, even if freely offered as part of the franchising process. The result of this Section 606 is to eliminate channel-offering competition among applicants for cable franchises or, worse, encourage them to promise everything, but not deliver. Moreover, because access channels (including commercial leased access channels) can provide an alternate source of programing that is not controlled by the cable operator, Section 606 eliminates a community's ability to ensure that the cable conduit will be open to competing program suppliers. Sec. 606 may be contrasted with the Staff Report "FCC Policy on Cable Ownership" at page 75. The FCC Report justified elimination of cross-ownership restrictions in part because of the ability of local officials to mandate access channels.

2. PREVENTING COMPETITION AT TIME OF REFRANCHISING

Sec. 609 of the bill provides for automatic franchise renewal except where the franchisor makes specific adverse findings concerning the operation of the franchisee. The provision impedes the replacement of inferior operators.

It is not clear whether, under the bill, a cable operator would be able to challenge the findings of the franchisor before the courts or the FCC. If the decision may be litigated, any operator might be able to block a community from obtaining adequate cable service. The cost of obtaining adequate cable service would increase.

More critically, there may be many instances where a cable operator can provide adequate service, but is either unwilling or unable to provide service of the quality some other operator is willing to provide. There is little reason to grant a permanent right to use public properties to an operator who will not provide the best competitively available service. This is particularly true in areas where the investment in the cable system has long ago been returned to the owners. Cable operators should not be given a federal right to perpetual franchises for minimal service.

The right to grant multiple franchises may not ensure successful refranchising. Potential new operators may not be willing to risk building over existing systems. The Paul Kagan "Cable TV Franchising News Roundup" for December 17, 1982 provides an example. It reports that Ventura, California, which sought competitive bids rather than renew Century and Avenue TV Cable's franchise, received no bids at the November 30 deadline.

3. PREVENTING ENFORCEMENT OF FRANCHISE PROVISIONS

The bill clearly contemplates that cities will continue to make franchising decisions. The bill encourages cable operators to promise the world for a franchise, because it may leave states and localities with few effective rights to enforce the franchise terms. Localities may not be able to enforce promises to provide additional access channels under Section 606. They may not be able to enforce provisions to provide access to alternate service providers under section 607 (b)-(c). They may eventually be denied the right to regulate rates for basic, cable or telecommunications service (Section 607 (a)). A number of franchises contain forfeiture provisions which permit a locality to buy out a cable operator who fails to live up to the terms of the franchise agreement. Section 605 (c) would guarantee a cable operator who violates the terms of its franchise agreement a right to fair market value of its system—a result which is not justifiable. Of course, Section 609 (a) (1) permits a locality to refuse to renew the franchise of a cable operator who has failed to substantially comply with the material terms of the franchise. But this remedy may permit 15-20 years of franchise abuse.

4. FORCING MUNICIPALITIES TO PAY AN UNREASONABLE AMOUNT FOR ESTABLISHED CABLE SYSTEMS

Section 605 prohibits a locality from acquiring an ownership interest in a cable system unless it pays "fair market value based on the ongoing business value of the system, including good will." There is little justification for this federally-mandated standard. It may prevent two parties—a cable operator and a city for example—from deciding on a purchase price for a cable system years in advance of the sale. It may prevent local governments from entering into leaseback, sellback, or various other financing arrangements. Finally, even in the case of a takeover of a system, the formula mandated by Section 605 may force cities to pay too much for an existing system. The owner may have depreciated all the property associated with the cable system. The system may be old and in need of complete upgrade. The main value of the system may include the value of the franchise right itself. Cities should not have to pay a cable operator the value of its own franchise.

5. DISCOURAGING MUNICIPAL OWNERSHIP OF CABLE

A number of communities, like Shrewsbury, have opted to construct municipally-owned cable systems. Municipal systems are perceived by some as more responsive to community programing needs. Section 605 (c), however, appear to prohibit the slightest community involvement in programing, and might even prevent the community from appointing a board to oversee programing. Such a limitation would diminish the benefits of municipal ownership and is without justification.[2] The federal government permits PBS to program. The federal government should not deny localities the same right. Additionally, as noted above, Section 605 (c) may be read to prohibit localities from entering into various financial arrangements which may be important to construction of a municipal cable system. In the course of developing its cable proposal, Shrewsbury Light considered a number of financial options. Because a number of financing options were available, the community will be able to finance its system at the lowest possible cost. Such options should not be foreclosed.

6. PERMITTING COMPANIES TO UTILIZE RIGHTS OF WAY WITHOUT REASONABLE COMPENSATION

Section 608 (a) provides that cable companies can only be charged a franchise fee to cover the reasonable cost of regulation. A franchise is a valuable right to use city rights of ways, and has a market value. In an economic sense, and if local practice permits, there is no reason to permit an operator to use those rights of way without reasonable compensation.

7. CONFUSING THE ROLE OF STATE AND MUNICIPAL AUTHORITIES

Section 2 provides that the FCC shall have exclusive jurisdiction "regarding matters covered by or otherwise within the purview" of the bill. It is not clear what this provision means. It could be interpreted to prevent states and localities from engaging in any number of regulatory activities. Rather than clarify the authority of states and localities, this provison will make work for the courts. The results of the chaos will be to delay rather than promote rational development of cable.

There are a number of other flaws in the bill. It does not provide for commercial leased access. It does not provide for a procedure by which access requirements or rate regulation could be reinstated once lifted (Sections 606–607). It fails to exempt a cable operator from liability for libel, slander, etc., on commercial leased access channels, if the leasing is voluntary, and as a result may further discourage operators from offering such channels (Section 611).

Section 605 (a) (2) states that localities shall not prohibit directly or indirectly the ownership of a cable system by reason of applicant's ownership of any other media interests. Localities would apparently not be able to prohibit ownership even where acquisition of the cable system might violate principles underlying the antitrust laws. Enforcement of public policy is left only to the federal government (see 605 (a) (1)). Such a restriction goes too far.

STATEMENT OF AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association, which represents more than 1,750 local publicly owned electric systems throughout the United States, strongly opposes S.

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[2] Section 605 (c) prohibits a municipality from owning or controlling, directly or indirectly the content of any cable system programming. With regard to control, municipally-owned systems must have control over selection of programming, or the bill is unworkable. If, however, the bill would only prohibit municipalities from editing chosen programs, then the bill may be acceptable in that regard. With regard to owning, a municipality that happens to produce a program with commerical potential should not be foreclosed from marketing that program.

66, the "Cable Telecommunications Act of 1983." The bill would seriously damage local interests. It eliminates local regulation of the cable industry, severely restricts a local government's ability to negotiate for cable services, and completely ignores the public service aspects of cable technology.

Over the last several years, public power systems which are units of local government have become increasingly interested in using cable technology to deliver utility services effectively. Cable can be used for utility load control, energy management, meter reading, and automation of transmission and distribution functions. Consequently, APPA members are particularly concerned about provisions of the bill which would deny use of a public access channel for two-way energy management purposes. In addition, a local government would be prohibited from negotiating for the use of a public access channel for such utility purposes. In addition to precluding public access for utility purposes, there is absolutely no provision for leased access so that a utility would have no opportunity to buy time on the cable system for energy and data transfer purposes.

Other provisions of the bill are equally oppressive to local interests. Specifically, it would restrict municipal ownership by prohibiting indirect control of programing; it almost guarantees the renewal of a private company's franchise; it sets a high price on acquiring a cable system so that buybacks in most instances would be too costly for communities; and it limits community regulation of cable rates to the point that local regulation could be completely eliminated.

PUBLIC POWER'S INTEREST IN CABLE SYSTEMS

As mentioned above, public power systems are interested in cable technology because of its potential for energy management. Using cable fits into public power's energy services planning objective of holding down rates by increased efficiency and delivery of services and better communication between the user and the utility to shave peak loads. In addition, public power systems are keenly aware of the public service aspects of cable. For example, cable can be used to deliver other public services such as fire and police protection, health services, special education, and vast information transmission which will surely surpass the entertainment functions of the technology.

Corresponding with this increased awareness of the public service aspect of cable technology has been an increase in the establishment of municipal cable systems. Since 1980, 19 new municipal cable systems have been established across the country. Currently, there are 42 municipally owned cable systems; twenty-nine of these are in towns with public power systems. Seven of the cable systems were originally financed with loans from the utlity department. The size of the municipally owned systems range from 100 subscribers in Lexington, Oregon, to 8,400 subscribers in Frankfort, Kentucky. Basic monthly rates range from a low of $3.00 to a high of $13.00. (Attached to this statement is a list of municipally owned cable systems.)

One of the most recent examples of public cable ownership is the public power system of Shrewsbury's Electric Light Plant in Massachusetts, which was awarded the city's cable franchise last year. The cable system will have 80 channels and will provide burglar and fire alarm, medical alerts, studio rental, leased channels, and energy management. In a few years, it is projected to return $500,000 annually in lieu of taxes to the town. There will be a free hookup to every house in Shrewsbury. Its basic monthly rate will be $6.95.

As federal legislation is introduced which threatens to eliminate local regulation of the cable industry, the option of municipal ownership becomes more attractive to some communities. Through municipal ownership, the local government retains control over the services offered, over access, over rates, and over revenues produced. Most importantly, a local government can focus on its priority of service to the community, ensure citizen participation, and guarantee cable's availability for public service uses.

PROVISIONS OF S. 66 INCONSISTENT WITH LOCAL INTERESTS

The following will summarize provisions of the bill and briefly describe how the bill's provisions are not consistent with local interests:

Acquisition and ownership

Section 605(c):

"(c) Notwithstanding the provisions of subsection (a) of this section, a State or political subdivision or agency thereof, or franchising authority, may not acquire an ownership interest in any cable system, unless such State, subdivision, agency, or authority acquires such ownership or interest at not less than fair market value based upon the ongoing business value of the system, including goodwill. In any case in which any such State, subdivision, agency, or authority has or acquires any such ownership or interest, such State, subdivision, agency, or authority shall, in no case, own or control, directly or indirectly, the content of any of the programing on such cable system except as provided in subsection (b) and (c) of section 606." (Subsections (b) and (e) of Section 606 refer to access for public, educational, and governmental channels.)

The first sentence of Section 605(c) provides that a city must pay fair market value for a cable system it wants to acquire. A definition of fair market value is not included in the bill, but the Committee Report (Report No. 97.518) on last year's bill, S. 2172, states, "According to generally accepted economic principles, fair market value includes good will and the value of the cable system as an ongoing business." (page 16).

This fair market value provision is contrary to traditional buyback provisions in franchise agreements which permit buybacks at depreciated or book value. Book value usually includes the value of the physical assets and does not include intangibles such as the value of good will or the value of the franchise. The rationale behind depreciated value is that the cable operator has already received the value of the property through depreciation. In many cases, if fair market value is used, the cost of the system would be too exorbitant for a city to buy.

Most buyback provisions are included as a way to ensure that the cable operator will fulfill its commitment. In actuality, few cities do buy back cable systems. However, many franchises are coming up for renewal, and this section would be a very effective way to prohibit municipal ownership.

The second sentence of Section 605(c) would make it extremely difficult for a municipality to own its own cable system. It prohibits a locality which owns a cable system from controlling the content of any of the programing "directly or indirectly." Under this provision, a municipality leasing out its programing could be said to have indirect control, which would be illegal. Although the Committee Report states that a "State or municipality is free" to own or acquire a cable system, the language of the bill contradicts the report's conclusion.

Access

Sections 606 (a) and (b):

"SEC. 606. (a) Each cable system having 20 or more television broadcast channels . . . shall dedicate or set aside access channels for use by public, educational, governmental, and other channel programers in accordance with subsection (b) of this section.

"(b) Any cable system operator subject to subsection (a) of this section, shall dedicate or set aside for access, from available channels, 10 percent of such available channels for use by public, educational, and governmental channel programers."

The public access requirements only apply to cable systems with 20 channels or more. Since most cable systems currently have less than 20 channels, the access requirements are meaningless in those cases.

Furthermore, the access requirements would cease upon determination by the Federal Communications Commission (FCC) that there are "reasonably available alternatives for persons desiring to provide public, education, or governmental programing service. . . ." Reasonable alternatives could be interpreted to mean other television stations.

Definitions in Section 603 (7) and (10) equate a channel programer with one providing cable service and define "cable service" as one-way programing. Thus, access would be limited to traditional one-way programing, eliminating two-way interactive energy management services from the access requirements.

Under existing practices, access requirements are negotiated, and are part of a package which makes one cable company more advantageous to the city than another. Thus, Section 606 cuts off the negotiation process and, in fact, prohibits the communities from negotiating for more access.

In addition to limiting public access, the bill does not require leased access. The significance of leased access is that it allows diversity by enabling others who are not owners of the cable system to provide competitive services. In the case of a public power system, leased access would provide another opportunity for the utility to buy time on the cable system for energy and data transfer purposes.

REGULATION OF RATES

Basic services

Section 607(a)(1):

"SEC. 607 (a)(1). Each state or political subdivision or agency thereof, or franchising authority, is authorized to establish, fix, or otherwise restrict the rates charged by cable operators for the use of channels for the provision of basic service, and public, educational, or governmental service, and charged to subscribers by cable operators for such basic service, and such public, educational, or governmental service.

Section 603(1):

"(1) 'basic service' means the provision of retransmission of broadcast signals which is distributed by coaxial cable or any other closed transmission medium"

This section provides that the only rates a locality can regulate are public, educational, and governmental access programs and rates for basic services which are narrowly defined under Section 603(1) as broadcast programing. Under existing franchise procedures, the definition of basic services and what will be regulated by the local government is negotiated between the two parties. The narrow definition of basic services severely limits the negotiation process.

In addition, under provisions of Section 207(a)(2), the local government would not be able to regulate basic services if the Federal Communications Commission determined there were "reasonably available alternatives" to basic service programing. Reasonably available alternatives could include other broadcast signals or television stations.

Cable services

Section 607(b):

"(b) No executive agency of the United States, including the Commission, and no State or political subdivision or agency thereof, or franchising authority, shall have authority to regulate or restrict the provision of or nature of cable services offered over a cable system."

Section 603 (7):

"(7) 'cable service' means the provision by a channel programer for one-way programing on a per channel, per program, or other basis which is distributed by coaxial cable or any other closed transmission medium, but such term shall not include basic service;"

This section prohibits a municipality from regulating rates for cable services. Cable services are defined under Section 603 (7) as anything other than basic services. It would include interactive services, transmission of data, and nonvideo services, such as meter reading and energy management which a municipal utility would use. In the future, these cable services may become essential and generate the most revenue. Yet, the cable operator would not be regulated as to the amount it charged for such services.

Other areas precluded from rate regulations under this section include installation, reconnection, additional outlets, and converter charges.

Renewals and extensions

Section 609 (a)(1), (2), and (3):

"SEC. 609. (a) In any case in which a cable system operator submits an application to the franchisor for the renewal or other extension of such operator's franchise authorization, the franchisor shall grant such renewal or other extension if it finds that—

"(1) the cable system operator has substantially complied with the material terms of such franchise and with applicable law;

"(2) there has been no material change in the legal, technical, or financial qualifications of the cable system operator that would substantially impair the continued provision of service by such operator; and

"(3) the services and facilities to be provided by such operator are reasonable in light of the size, nature, needs, and interests of the community to be served, the age and status of the existing system, the current availability of facilities and services in communities of comparable size and characteristics, and the costs of construction and operation of cable facilities."

Under the franchise renewal provision, an existing cable system is almost guaranteed the right of renewal. A municipality would be required to renew a franchise if there had been substantial compliance with the original agreement, no material change in the qualifications of the cable operator, and the system is reasonable with respect to the size and needs of the community.

This renewal provision is contrary to a locality's basic franchising power, it is anticompetitive, and its vague criteria may result in numerous court challenges. Specifically, franchising is a basic state power which is usually delegated to the city to allow a private company to use the public right of way. A federal law should not set criteria for the local franchising process.

By codifying into federal law a preference for the existing company, the renewal provision almost guarantees a perpetual franchise to the existing cable company. This preference will prevent other companies from bidding on the renewal. Although the bill does not prohibit the city from considering applications from other companies, it is unlikely that another company will bid on the franchise when there is such partiality for the original cable company. As in any other monopoly situation, competition will not be present to spur on the existing company to provide better service.

Lastly, there is no definition of the criteria for "material," "substantial," and "reasonable." The problem with such vague criteria is that a decision of a city to deny a franchise renewal will probably result in costly and time-consuming litigation which will restrict the city's power with respect to the franchise for months or even years.

CABLE POLE ATTACHMENT FEES

Although cable pole attachment fees are not covered in S. 66, there have been some indications that the cable industry will attempt to add a provision to the bill which would put pole attachment fee agreements between their members and municipal electric utilities and cooperatives under the Federal Communications Commission (FCC). There is no justification for such federal intrusion into local affairs, and APPA member systems strongly oppose such a provision.

Under current law, FCC has jurisdiction only over pole attachment fee agreements with private utilities, in the absence of state law. Public power systems were exempt from FCC jurisdiction because they are units of local government, and their activities are controlled and regulated by city councils or boards which are responsive to the interest of the community through the local decisionmaking process. Placing municipal pole attachment agreements under FCC jurisdiction imposes another layer of bureaucracy, and it suggests a significant work load for FCC. In addition, pole attachment rates are only peripheral to the major issues of cable communications legislation and should not be considered in the same bill.

CONCLUSION

In conclusion, APP strongly opposes S. 66 because it is seriously damaging to local interests. In light of the bill's adverse impact on communities, the American Public Power Association urges this subcommittee to reject S. 66.

ATTACHMENT

CABLE COMMUNICATIONS SYSTEMS [1]

Cable system by State	Person in charge; phone	Year started	Subscribers	Channels	Basic monthly rate	Utility use	Structure	Financing
Alabama:								
Riviera Utilities, 413 East Laurel Ave., Box 550, Foley 36536.	H. Sewell St. John Jr. 205/943-5001	1982	776	16-36	$10.50	No	Separate function of utilities board.	Retained earnings of utilities board.
Lincoln Cable TV, Box 172, Lincoln 35096.	C. O. Watson 205/763-7777	1983	550	12	10.00	No	Separate department	City loan.
Opp. Cablevision, Box 311, Opp 36467	Charles McGowan 205/493-4571	1967	2,500	10	6.00	No	Under utility department	City operating revenues.
Arkansas:								
Conway Corp., Box 99, Conway 72032	James H. Brewer 501/329-5641	1980	4,740	19	7.50	No	Owned by city and leased to municipal Conway Corp.	Loan from utility department.
California:								
San Bruno Municipal Cable TV, 567 El Camino Real, San Bruno 94066.	David A. Thomas 415/877-8889	1971	8,000	22-26	7.26	No	Separate department	
Colorado:								
Copper Mountain Metropolitan District Cable TV, Box 3195, Copper Mountain 80443.	Ray Bishop 303/968-2882 ext. 6440	1977	700	6	13.00	No (investigating)	Metropolitan District (similar to city government).	General obligation bonds.
Florida:								
City of Newberry, City Hall, Newberry 32669.	Layne Rooks 904/472-2161	1974	600	8	6.00	No	Part of utility department	Utility's general fund.
Valparaiso Communication System, Box 296, 44 Southview Ave., Valparaiso 32580.	Thomas Miller 904/678-2922	1976	1,217	20	6.00			
Georgia:								
City of Covington CATV, Covington 30209.	Frank Turner 404/786-5324	1980	2,000	18-35	6.00	Air-conditioning load management planned.	Separate cable department	City's general fund.
City of Monroe, Box 725, Monroe 30655.	John T. Briscoe Jr. 404/267-5756	1972	2,789	19-21	4.00	Air-conditioning load management.	Under utility department	Utility's general fund and local bank.
Illinois:								
City of Madison, Box 87, Madison 62060.	Mike Macek 618/877-4854	1982	1,000 (est.)	No TV		Burglary, fire and emergency service.	Separate alarm and cable department.	City's general fund.
Iowa:								

Coon Rapids Cable System, 123 Third Avenue, Box 207, Coon Rapids 50058.	Eugene P. Smith 712/684-2225	1982	300	15-35	9.50	Will use next year	Operated by utility: separate board for policy.	Utility reserve funds.
Hartly Municipal Cable System, 169 South Central Ave., Hartly 51346.	Dean Meyer 712/728-2240	1983	425	17	9.00	Maybe load management.	Separate department	Loan from surplus electric funds.
Manning Municipal Cable Board, 719 Third St., Manning 51455.	Gerald Beck 712/653-3214	1982	375	20	9.50	Load management in 1983.	Operated by separate board	Electric revenue bonds for load management; gas department surplus for the rest.
Primghar Municipal Cable TV, 741 16th St., Primghar 51245.	Robert Mulder 712/757-2435	1981	275	21-36	8.50	No	Part of utility department	General obligation bonds.
Community Cable Television Corp., City of Sanborn, Sanborn 51248.	Allen Bonderman 712/729-3974	1981	320	21-36	8.50	Load management/ air conditioners and water heaters.	Corporation controlled by city	Utility funds and corporation revenue bonds.
Kansas:								
Americus City CATV, Americus 66835	Mike Wooderson 316/884-5655	1976	252	9	12.00	No	Separate cable department	Revenue bonds.
Arma Cablevision, city of Arma, Box 829 Arma 66712.	Mavis Masterson 316/347-4125	1981	378	13-14	7.50	No	Separate cable department	Cable Revenue bonds.
Baxter Cable Vision, city of Baxter Springs, Baxter Springs 66713.	Don Henry 316/856-3600	1980	1,000	11	8.50	No (weather alert)	City-owned	Industrial revenue bonds.
City of Cawker City, Box 2, Cawker City 67430.	Delbert Wallace 913/781-4713	1977	220	6	8.00	No	Separate department	General obligation bonds.
Columbus Cablevision, 300 East Maple, Columbus 66725.	Gail Houser 316/429-2159	1980	648	11	8.00	Emergency disaster warning.	Separate city department	Revenue bonds.
Marion Municipal Cable Vision, city of Marion, Marion 66801.	Joan Bowers 316/382-3703	1978	400	12	10.50	No	Separate department	General obligation bonds.
City of Pawnee Rock Cable Television Utility, Box 218, Pawnee Rock 67567.	La Wanda Hendricks 316/982-4386	1983	125 (est.)	8	20.00	No	Separate city utility department	Cable revenue bonds.
City of Waverly, Box 308, Waverly 66871.	Diane Phillips 913/733-2461	1977	150	9	12.50	No	Separate city department	General obligation bonds.
Kentucky:								
Community Service Inc., 325 Ann St., Frankfort 40601.	Ben Fowler 502/227-7513	1952	8,400	16	3.50	No	Nonprofit corporation	City loan.
Massachusetts:								
Shrewbury's Electric Light Plant, 100 Maple Ave., Shrewsbury 01545.	James E. Baker 617/845-4881	Voters approved in 1982	6,5000 (est.)	80	6.95	Energy management	Franchise awarded Electric Light Plant to construct and operate.	General obligation bonds.

CABLE COMMUNICATIONS SYSTEMS [1]—Continued

Cable system by State	Person in charge; phone	Year started	Subscribers	Channels	Basic monthly rate	Utility use	Structure	Financing
Michigan:								
City of Crystal Falls, 401 Superior Ave., Crystal Falls 49920.	Walter E. Hagglund 906/875-6650	1959	800	10–21	4.50	No	Part of utility	Loan from city's general fund.
City of Norway CATV, Box 194, Norway 49870.	Junior Stanchina 906/563-9641	1954	1,465	11	4.00	No	Part of utility	Utility general fund.
Wyandotte Municipal Service, 3005 Viddle Ave., Wyandotte 48192.	Dale Simmons 313/282-7100 ext. 364	1982	6,000	52	8.00	Future use planned	Separate department within utility	Lease system from private investors with purchase agreement at a fixed date.
Minnesota:								
Bagley City Cable TV, Box M, Bagley 56621.	Bernie Staving 218/694-2300	1976	506	11	7.65	No	Within utility department	Cable revenue bonds.
City of Fosston Cable TV, 220 First St., NE, Fosston 56542.	Russell Earls 218/435-1737	1976	550	12	6.75	Load management	Under Utility	Cable revnue bonds.
Jackson Municipal TV System, 504 Second St., Jackson 56143.	Kevin Murray 507/847-3225	1957	1,200	10–12	5.00			
Missouri:								
Newbury Cable TV System, Newbury 65550.	Barbara Macormic 314/762-2315	1969	260	6	5.00	No	Operated through city hall	Borrowed from private development corporation.
Unionville Cable Authority, 1621 Grant St., Box 206, Unionville 63565.	Larry C. Westson 816/947-3316	1980	734	11	8.25	No	Separate nonprofit board	Cable revenue bonds.
Oregon:								
Cascade Locks CATV, Box 308, Cascade Locks 97014.	Ken Hobson 503/374-8484	1972	366	10–23	6.75	No	Separate department administered by council.	Cable revenue bonds.
Town of Lexington, Lexington 97839	Mayor Ed Baker 503/989-8116	1959	100	8	5.00			
Pennsylvania:								
New Wilmington Borough Cable TV, 140 West Neshannock Ave., New Wilmington 16142.	Ed Garrett 412/946-8167	1979	300	12	6.00	No	Separate department	General city fund.
Pitcairn Communtiy Antenna System, 582 Sixth St., Pitcairn 15140.	George Myers 412/372-6500	1953	1,000	10–35	3.00	No	Under light department	Installation fees of original subscribers.
Rouseville Television Club, Rouseville 16344.	Charles Licht 814/676-2171	1957	275	8	3.00			

South Dakota:								
City of Beresford, 101 North Third St., Beresford 57004.	Terry L. Peters 605/763-5501	1982	....	12	....	....	....	....
Washington:								
City of Sumas TV Cable System, Box 5, Cherry St., Sumas 98295.	Lawrence Silvis 206/988-5711	1953	264	7	4.50	No	....	....
Wisconsin:								
City of Oconto Falls, 104 South Franklin St., Box 70, Oconto Falls 54154.	George Barber 414/846-2911	1981	Now 450; plan 600	20-52	7.95	Maybe meter reading ..	Under utility commission	Bank loan backed by city.

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[1] Publicly owned cable communications systems in cities or towns served by local publicly owned electric utilities are underlined. When two numbers are listed under "Channels" the first is the number in use and the second is the number available.

STATEMENT OF JAMES E. NEILSON, MANAGER, SULLY BUTTES TELEPHONE COOPERATIVE ON BEHALF OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

Mr. Chairman, members of the subcommittee, I appreciate having the opportunity to comment on cable television issues and S. 66, the Cable Telecommunications Act of 1983. My name is James Nielson. I am Manager of the Sully Buttes Telephone Cooperative in Highmore, South Dakota. Sully Buttes is a member-owned telephone system serving four thousand subscribers in Central South Dakota.

I am also testifying on behalf of the National Telephone Cooperative Association (NTCA), a national trade association comprised of more than four hundred locally-owned and operated small telephone systems located in rural areas in over 40 states.

Many NTCA members are interested in providing CATV. It represents an opportunity to bring a new service to their community. Approximately 60 of our member systems are providing CATV in rural areas where off-the-air television reception is poor and limited. Commercial CATV has been extremely slow to develop in many sparsely-settled parts of the country. Subscribers of rural telephone systems frequently ask the management to set up a cable system.

Provision of CATV is one of several services which telephone systems are offering in order to improve their financial security. As you know, the telephone industry is in a state of transition now. Federal changes in the division of telephone revenue within the national network have attracted considerable public attention and concern. Many details on the impact of these changes on telephone rates are as yet unavailable; however, it appears that the rural telephone rates will increase. In all probability, some customers will be forced to discontinue service. Deregulation to encourage competition and the by-pass of the local exchange by other competitive technology also will erode the revenue base of rural telephone systems. Operating a CATV system offers a small telco some financial stability as well as an outlet for technological knowhow. Other broadband services such as teletext, video tex, utility load sharing and burglar alarm systems are also possible activities to be offered over CATV and telephone facilities.

In my comments on cable legislation for 1983, I would like to focus on the following areas: Removing impediments to CATV development in rural areas by encouraging local telephone systems to offer service; promotion of competition for franchises up for renewal; and by-pass of the local telephone network by cable systems interested in cream-skimming heavy revenue users.

REMOVING IMPEDIMENTS TO CATV DEVELOPMENT IN RURAL AREAS

The subcommittee should be commended for its efforts in recent years to promote CATV development in rural areas. Last year the subcommittee removed sections in S. 2172 which would have codified a regulatory ban on telco provision of CATV in its service area. S. 66 has no section regarding the ban. Allowing small rural telephone systems to compete for CATV franchises not only will promote development of an important technology in rural areas, it will also promote one of the purposes of the Act, as stated in Section 602 of the bill:

"(1) establish a national policy . . . to encourage a *competitive environment* for the growth and development of cable telecommunications;" (emphasis added)

Since the Federal Communications Commission limits the exemption from its administrative ban to those telephone systems which serve areas which contain no community of over 2,500 persons, it is the rural people who will benefit most from the subcommittee's move towards deregulation.

However, it should be noted that the FCC ban is administered strictly. A telco serving a community of 2,502 is ineligible for the exemption. The process to obtain a waiver of the FCC ban is time-consuming, and often slowed by filings from cable interests which have little if any intention of actually serving the area under consideration. Otherwise, they could have done it between 1970, the year of the FCC ban, and 1982 when the 2,500 exemption was created. I urge the Subcommittee to instruct the FCC to broaden its exemption to the U.S. Census Bureau definition of a non-Standard Metropolitan Area.

PROMOTING COMPETITION FOR EXISTING FRANCHISES

S. 66 includes an anti-competitive provision relating to the franchise renewal process. Section 609(a) virtually guarantees franchise renewal in perpetuity to the original CATV operator:

"The franchisor shall grant such renewal or other extension if it finds that (1) the cable system operator has *substantially* complied with the material terms of such franchise and with applicable law;" (emphasis added)

Few cable companies would operate below the broad terms set for renewal under Section 609. Subsection (b) provides little relief for potential competitors in rural areas or small towns, because it is highly unlikely that it could support more than one cable company. It truth, a cable television franchise is a de facto monopoly. Consequently section 609 conflicts with the overall competitive purpose of the bill and should be deleted.

BYPASS OF THE LOCAL TELEPHONE NETWORK

I am profoundly concerned about the inclusion in S. 66 of broad common carrier language. Under Section 607(c), cable television systems are authorized to provide any communications service—including telephone service—without regulation. While cable systems are precluded from offering basic telephone service, the latter definition does not include traditional services such as data transmission. It seems the cable television industry wants to have its cake and eat it, too.

For over a decade the CATV industry has argued to be unfettered from the shackles of broadcast signal carriage requirements. Meanwhile it urged protection from the telephone industry's competition. For 11 years it faced no competition from local telephone companies, yet it only gradually cabled the country and almost ignored rural areas.

Today the cable industry in the name of protectionism continues to argue for strict limitations on telephone company competition in the local service area. Meanwhile, for a decade millions of Americans, especially in rural areas, have been denied the news, information and entertainment from CATV which telephone companies were ready and willing to offer.

Now cable television wants to compete in the telephone industry. Not surprisingly they do not want to do it as a regulated carrier on an equal footing with the telephone industry. In truth, the cable industry wants to cream skim the lucrative business and high volume residential user without the obligations of providing universal service. The result of such a "deregulation" will be lower rates for the large business users and higher rates for the small business and residential users. It is difficult to find sufficient benefit from such selective governmental regulations to outweigh its liabilities.

Traditionally NTCA has favored competition on the assumption that new services will benefit the consumer. We continue to support competition but in an arena where all the players participate under the same rules. True competition cannot exist where one participant is shackled by regulations and the other is not.

In summary, I believe that it is time to treat cable television and telecommunications companies equally in regulation. Either make us all common carriers with regulated tariffs or free us all to pursue our destinies in the marketplace of competition. Do not fetter the telephone industry, especially in rural areas which already have high costs, with unfair competitive liabilities and then preclude us from competing for franchises by an automatic franchise renewal standard or encourage our competition to bid for our most lucrative customers while we are precluded or restricted in competition by the FCC regulatory cross-ownership ban.

Thank you for this opportunity to testify.

STATEMENT OF MOUNTAIN STATES LEGAL FOUNDATION

INTRODUCTION

Mountain States Legal Foundation (MSLF) is a non-profit public interest law center dedicated to the advancement of individual liberty and economic freedom. Founded in 1977, MSLF has been actively involved in litigating cases dealing with constitutional rights, misuse of taxpayer funds, access to public lands, and sound resource development. The Foundation is supported entirely by voluntary contributions from members throughout the country, particularly the Rocky Mountain region.

MSLF does not engage in lobbying, but frequently provides testimony or comments in areas of particular expertise acquired during litigation when invited to do so by policy-makers. These comments, which were invited by the staff of Senator Barry Goldwater, sponsor of S. 66 in the 98th Congress, are general observations and recommendations on this proposed legislation. They should not be interpreted as endorsements of the need for federal regulation of cable television.

MSLF has substantial interest and experience in the legal aspects of cable television regulation. Its legal staff has monitored dozens of cases in which First Amendment, antitrust, private property rights, and other issues have been considered. The Foundation sought to intervene at the federal district court level in *Community Communications Co.* v. *City of Boulder*, presenting First Amendment arguments on behalf of viewers. Ultimately, many of the antitrust issues in that case were resolved by the United States Supreme Court,[1] and the parties reached a settlement, precluding any chance for active MSLF participation and a final resolution of First Amendment issues.

In October 1982, MSLF filed suit in federal district court in Denver, challenging solely on First Amendment grounds the award of a de facto exclusive cable television franchise by the City of Denver and the extensive regulatory scheme to which cable television in Denver is subject.[2] MSLF represents a number of its members who are denied any choice among competing providers of cable services and who will ultimately be forced to bear the costs of the expensive public services mandated by the city. MSLF is strenuously opposed to governmentally imposed cable television monopolies, and believes that this important communications medium should be free from extensive government regulation at local, state, and national levels. As a result, the Foundation hopes through its lawsuit to remove the barriers erected by government between providers of cable services wishing to compete in the marketplace and consumers desiring those services. Because this is a First Amendment lawsuit, the precedent it establishes will be directly relevant to state and federal regulation of cable television.

MSLF recognizes and appreciates the enormous effort involved in the drafting of a national cable television policy. Cable television and related technologies possess tremendous potential to dramatically impact our society, not only in terms of entertainment, but in information dissemination, security, finance, commerce, and communications. This burgeoning technology can develop its full potential only in a competitive environment free from debilitating governmental interference. MSLF submits these comments for consideration in light of the free enterprise spirit which inspired this bill.

The comments herein are directed at specific provisions of S. 66 which MSLF believes detract from the sound procompetitive public policy expressed in the bill.

SPECIFIC COMMENTS

The First Amendment and Cable Television

Cable television constitutes a form of communications fully protected by the First Amendment.[3] Neither the federal interstate commerce power nor municipal power to control public streets constitute sufficient authority to abridge the First Amendment rights of cable providers or subscribers.

The First Amendment protects the voluntary relationship between speaker and listener. Where a provider of cable communications wishes to provide services to a consumer desiring those services, government cannot erect unreasonable barriers between them.[4] Thus, government may not arbitrarily exclude speakers from public property,[5] nor may it exercise control over the content of the communications.[6] While the freedom to communicate and receive communications is not absolute, any restrictions imposed by government must be precisely tailored to achieve legitimate public health, safety, and welfare concerns.[7] As the Supreme Court has emphatically stated, "only considerations of the greatest urgency can justify restrictions on speech."[8]

The First Amendment guarantees a free marketplace for communications, a concept echoed in this bill. The rights involved are precious and vital to our system of liberty, and all regulations and restrictions of those rights must be viewed with skepticism. MSLF therefore urges Congress to proceed in this area with the greatest of caution, being ever-mindful of the important rights involved.

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[1] — U.S. —, 70 L.Ed. 2d 810 (1982).

[2] *MSLF, et al.* v. *City and County of Denver, et al.*, (D. Colo., No. 82-C-1738, filed October 18, 1982). A copy of the Amended Complaint is attached and made a part of these comments. (Retained in committee files.)

[3] *See, generally, Community Communications Co.* v. *City of Boulder*, 660 F.2d 1370, 1375-80 (10th Cir. 1981).

[4] *Virginia State Board of Pharmacy* v. *Virginia Citizen's Consumer Council*, 425 U.S. 748, 756-57 (1976).

[5] *Police Department of the City of Chicago* v. *Mosley*, 408 U.S. 92, 94-96 (1972).

[6] *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241, 258 (1974).

[7] *U.S.* v. *O'Brien*, 391 U.S. 367, 377 (1968).

[8] *Speiser* v. *Randall*, 357 U.S. 513, 518 (1958).

SECTION 602

Section 602 establishes the purposes of the Cable Telecommunications Act of 1983. Of particular concern to MSLF are the goals expressed in section 602(1) and (2)—to encourage a competitive environment for the growth and development of cable telecommunications, and to establish guidelines for governmental regulatory authority. This section is consistent with MSLF's view that the First Amendment requires government's role in the communications regulation to be carefully crafted and extremely limited in scope.

The First Amendment entrusts to the marketplace the regulation of communications. It protects against government interference fee and open competition, with its enormous benefits for entrepreneurs, consumers, and technological advancements. As a result, the goals articulated in this section appear compatible with the First Amendment and the interests it protects.

With these mutual goals in mind, the remainder of MSLF's comments are addressed to provisions of this bill which will directly impact these vital objectives.

SECTION 606

This section requires most cable companies to dedicate 10 percent of their channels for public access, absent a showing by individual companies that reasonable alternatives exist. The franchising authority may assume full control over the allocation and use of access channels.

The requirement of access channels represents a governmental intrusion into editorial processes unprecedented in its magnitude. By virtue of their desire to provide communications services to subscribers, cable operators must turn over a significant portion of their channels for public access. Cable operators may be deprived of all control over access channel use and contest, while remaining nonetheless financially obligated to support the system. To remove these requirements, the operator would have the burden of proving the absence of public necessity, at potentially great expense in an administrative forum. This section vests in government the very editorial control which the First Amendment was designed to prevent.

The only conceivable justification for such burdensome requirements is the misconceived but widely-held notion that a community can be served by only a single cable television system. It is increasingly clear, however, that cable monopolies are typically the creations of governmental entities, rather than the marketplace.[9] Municipalities frequently create cable monopolies and then mandate access channels and other requirements on the basis of the company's monopoly status. As a result, competition is essentially precluded, with the absence of direct competition forming the basis for yet additional regulation. In any event, the First Amendment could well preclude access requirements regardless of the presence or absence of direct competition.[10]

The ultimate burden of access requirements will likely be borne not by cable operators, but by subscribers. As a precondition to receiving desired programming services, subscribers must subsidize, through higher subscription rates, programming for which there is no demonstrated market demand. Such subsidization can be extremely costly for subscribers.[11] If public access truly meets a public need, the costs should be borne by the public-at-large, which receives any direct benefits of such access.

Access channel requirements weigh heavily upon the relationship between willing speaker and willing subscriber. MSLF submits that such requirements clearly contravene the First Amendment.

SECTION 607

Section 607(a) authorizes franchisors to regulate rates for cable programming services, absent an affirmative showing of "reasonably available alternatives" in the marketplace. Such authority, MSLF believes, exceeds the permissible scope of governmental power.

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[9] See, e.g., Goodman, "Government Versus Cable TV," 3 Lincoln Review 23 (1982).

[10] See, e.g., *Midwest Video Corp.* v. *F.C.C.*, 571 F.2d 1025, 1053 (1978). For a discussion of the incompatability of access requirements with the First Amendment, *see* Goldberg, et al., "Cable Television, Government Regulation, and the First Amendment," 3 COMM/ENT L. J. 577, 600–05 (1981).

[11] The cost of various regulatory burdens passed onto subscribers, including access channels, averages $5.60 per month per subscriber. Peterson & Pearce, "The cost of Cable Television Regulatory and Franchise Requirements: A Preliminary Analysis" (1982).

While rate regulation of public utilities has been upheld due to service necessity, cable services cannot be characterized as a necessity. Additionally, cable television is a communications medium protected by the First Amendment, and rate regulation exceeds the narrow "time, place, or manner" regulations to which government's power is limited.

Rate regulation cannot be justified by the existence of monopolies which government itself has created. Regulation of rates interferes with the free communications marketplace guaranteed by the First Amendment. As a result, MSLF believes that the rate regulation authorized by section 607(a) exceeds the limited parameters of government power in this area.

Conversely, the concepts embodied in section 607 (b) and (c), prohibiting government regulation or restriction of the provision or nature of cable services, represent an important limitation against censorship. As a result, section 607 (b) and (c) appears fully consistent with the First Amendment.

SECTION 608

Under section 608, the Federal Communications Commission (FCC) may establish ceilings on permissible franchise fees. Section 608(a) provides that the ceiling shall be established "to permit only recovery by [the franchisor] of the reasonable cost of regulation." Current franchise fee practices are clearly excessive. While the First Amendment requires that any special fees assessed against communicators reflect only the costs of municipal services, this is not true of present franchise fee requirements. In most instances, franchise fees are expressed in terms of percentage of company gross revenues (usually 5 percent), which has no direct relationship to costs of municipal regulation. Further, the fee is typically excessive, corresponding not to the value of special municipal services but to the value of the governmentally mandated exclusive cable franchise.[12] An artificial monopoly bestows inflated profit potential upon the franchisee, which in turn profits the franchisor through the franchise fee. Such an arrangement, however, burdens the purported beneficiary of government regulation—the subscriber, who pays increased costs. MSLF submits that any franchise fee structure which is not based upon actual government costs is incompatible with the First Amendment.

SECTION 609

MSLF believes that the principle that cable television permits should be renewed absent good cause to refuse such renewal is consistent with the First Amendment. To the extent that this section places the burden of proving operator qualifications on an existing cable provider, however, the burden should be reversed to place the onus upon the body seeking to deny the cable operator's permission to provide communications.

Additionally, section 609(a)(3) authorizes the franchisor to deny franchise renewal if it finds that the existing cable system is not "reasonable" in light of various factors. This vests decisionmaking power in government which should properly reside only in the market. The First Amendment guarantees a free market in communications, with individual providers and consumers as the sole arbiters of what is "reasonable." Rather than allowing government to grant or deny exclusive franchises, the market is entrusted with the responsibility to efficiently allocate cable costs and services. MSLF submits that this authorization to determine reasonableness of services exceeds permissible governmental power under the First Amendment.

ADDITIONAL COMMENT

Implicit in this proposed legislation, though not specifically addressed, is the issue of municipal authority to award exclusive cable television franchises. When not restricted by governmental action, cable television companies can and do compete. For certain services, cable competes with other media and alternative delivery systems. In those few cities without actual or de facto exclusive franchises and extensive regulation, head-to-head competition among cable companies frequently exists.[13]

Exclusive franchises in communications are incompatible with the First Amendment, as well as the pro-competitive national policies embodied in the Sherman Act and recited in this bill. MSLF submits that exclusive franchises are intolerable burdens on the free and open communications marketplace, and that government power to create them must be curtailed.

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[12] See Goodman, *supra*.

[13] E.g., Phoenix, Ariz.; Paramus and Hillsdale, N.J.; Bethlehem and Allentown, Pa.

CONCLUSION

The strength of the American system is based upon free enterprise and technological creativity—not upon government franchises and heavy regulation. Competition as a creative impetus to producers and as a beneficial force for consumers is precluded by such regulation. The solution cannot be further regulation at the national level, but an emphasis on removing impediments to competition at all levels of government.

Fortunately, the First Amendment safeguards the competitive relationship in communications which so benefits entrepreneurs and consumers. MSLF's purpose in its efforts in this area is to remove artificial impediments imposed by government which shackle a free market in cable communications. Its comments are submitted in the hope that Congress will fully recognize the vital function which the First Amendment plays in safeguarding open communications markets, and that it will thereby work to ensure that the cable marketplace is unhampered by burdensome regulations contrary to the Constitution.

City of San Antonio,
San Antonio, Tex., February 11, 1983.

Hon. Barry Goldwater,
Chairman, Senate Subcommittee on Communications,
Washington, D.C. 20510

Dear Senator Goldwater: The City of San Antonio has developed a Cable TV agreement which provides specific services to the community through various access channels. The rates for connection and installation services are regulated, but there are no restrictions on the profitability of the cable operator. In this respect, the service is already "deregulated".

In addressing the issue of continuing to provide community services through the cable television medium and allowing for mutually beneficial operations, the City of San Antonio passed a resolution opposing S. 2172 (enclosed). Inasmuch as the Cable Telecommunications Act of 1983, (S. 66) is substantially the same as S. 2172, the City also opposes passage of S. 66.

Your consideration of our concerns is greatly appreciated.

Sincerely,

Henry G. Cisneros,
Mayor.

Enclosure.

A Resolution, No. 82-39-50, Opposing the Cable Telecommunications Act of 1982 (S. 2172)

Whereas, the Cable Telecommunications Act of 1982 (S. 2172) is under consideration by the Congress, a bill which deregulates and frees the cable television industry from government control, especially local government control; and

Whereas, many of the provisions of the local cable television franchise ordinance would be rendered moot if such legislation should be enacted, including many provisions which were the subject of long debate, study, and negotiations with those seeking a local franchise; and

Whereas, the proposed legislation would limit a local government's control over the number of channels to be provided, the prices charged subscribers for various services, and limit franchise fees to the amount necessary to recover the cost of local regulation; and

Whereas, the City would be legally required to renew its franchise ordinance after the present initial term of fifteen years if the franchisee has met certain standards as set forth in the federal law; and

Whereas, the number of access channels as required in the local franchise would be reduced, and requirements for local production studies and production equipment to assist members of the public in preparing programming would be eliminated; and

Whereas, various other portions of the local franchise and other powers of local governments in controlling cable television in the community and the terms and conditions under which public streets and way mays be used for construction of the cable system would be eliminated or severely limited; now therefore be it

Resolved by the City Council of the City of San Antonio: That the City Council opposes the Cable Telecommunication Act of 1982, strongly urges its defeat.

Passed and approved this 9th day of September, 1982.

HENRY G. CISNEROS, *Mayor.*

MORALITY IN MEDIA INC.,
New York, N.Y., February 14, 1983.

CHRISTOPHER D. COURSEN, ESQ.,
Assistant Communications Counsel,
Senate Commerce Committee,
Washington, D.C.

DEAR MR. COURSEN: On February 2nd we telephoned the office of Senator Goldwater and were informed that it would be permissable in lieu of attendance at the public hearings of February 16th and 17th to put our comments in writing and that they would become part of the record of the Hearings. We have the following comments:

S. 66 is defective in failing to address the problem of obscenity and indecency on cable T.V. The nation is being assailed with twelve major programers offering explicit sexual material which they could not and would not dare present on conventional television or radio because of the provisions of Title 18 of the U.S. Code, § 1464 prohibiting the broadcasting of the obscene or indecent. They present such materal on cable because they are safe from prosecution in that the United States Supreme Court has indicated that cablecasting is not broadcasting (*Teleprompter Corp.* v. *Columbia Broadcasting Sys., Inc.*, 94 S. Ct. 1129 (1974)), and the United States Department of Justice, by letter addressed to this organization dated October 10th, 1980, takes the position that obscenity or indecency on cable is not proscribed by 18 U.S.C. 1464.

S. 66, while professing to be the Cable Communications Act, fails to address this problem which not only exists on the regular channels but is also rampant on public access in metropolitan centers. The case of *FCC* v. *Pacifica Foundation,* 438 U.S. 726 (1978), tells us that we need not require that conventional programing be obscene before we act, but it is enough if it is "indecent." The attention of this Committee is called to the fact that cable comes through the same television set as conventional T.V. If Congress can proscribe indecent broadcasting, it can and should proscribe indecent cablecasting. We therefore suggest the following amendment to S. 66:

CRIMINAL LIABILITY

SEC. 3. Section 1464, Title 18, United States Code is amended as follows:

"§ 1464. Broadcasting, *telecasting, or cablecasting obscenity or indecency.* [obscene materal.]

(a) *Offense.*—Whoever *knowingly* utters any obscene, indecent, or profane language, *or distributes any obscene or indecent material,* by means of radio, *television or cable television* communication shall be fined not more than $10,000 or imprisoned not more than two years, or both, *if the subject matter is obscene, and shall be fined not more than $5,000 or imprisoned not more than one year, or both, if the subject matter is indecent or profane.*

(b) Definitions.—As used in this section—

(1) 'obscene material' means material which:

(a) the average person, applying contemporary community standards for radio or television, would find, taken as a whole appeals to the prurient interest; and

(b) depicts or describes, in a patently offensive way, an ultimate sexual act, normal or perverted, actual or simulated; masturbation; an excretory function; a lewd exhibition of a human genital organ; or flagellation, torture, or other violence, indicating a sado-masochistic sexual relationship; and

(c) taken as a whole, lacks serious literary, artistic, political, or scientific value.

(2) 'indecent language or material' means a depiction or description of: a human sexual or excretory organ or function; or nudity; or an ultimate sexual act, normal or perverted, actual or simulated; or masturbation; or of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship; which under contemporary community standards for radio or television is presented in a patently offensive way.

(3) 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or produce or provide such language or material for distribution.

(c) Nothing herein is intended to interfere with or preempt the power and right of the states and their political subdivisions over franchises or to regulate in this area as to obscenity or indecency, within their respective jurisdictions, in a manner which is not inconsistent with this section."

Thank you for your attention.

Sincerely,

James Alleyva, *Attorney.*

City of Austin,
Office of the Mayor,
Austin, Tex., February 14, 1983.

Hon. Barry Goldwater,
U.S. Senate,
Washington, D.C.

Dear Senator Goldwater: It is my understanding that you have recently introduced legislation—Senate Bill 66, "Cable Telecommunications Act of 1983"—that will seriously affect a city's contractural relationship with its franchised cable operator.

After a review of the issues included in this Bill, the Austin Cable Commission has recommended that the City of Austin oppose such legislation.

Passage of Senate Bill 66 in its present form, would severely limit any city's ability to regulate and utilize the valuable community communications resource provided by local cable systems.

The City of Austin recently completed a lengthy franchise process resulting in a cable operation which will provide our City with state-of-the-art cable capabilities, major community service provisions, and the resources to effectively use the system to provide educational, informational, and cultural programing to all of Austin's citizens.

The Austin City Council, Cable Commission, and Cable Communications office are developing and promoting effective community programming activities, sophisticated uses of our institutional network, and better cable company/community relations. We are committed to working with our local cable operator and community agencies, organizations, and institutions to achieve these results. The City's franchising and regulatory authority will assure that these potentials are realized.

Senate Bill 66, as it is proposed, would seriously hamper these efforts.

On behalf of the City of Austin, I urge you propose legislation that will not give the cable television industry virtual free rein to operate without city controls and community involvement.

Sincerely,

Carole Keeton McClellan,
Mayor.

Cable Television Access Coalition,
Boston, Mass., March 7, 1983.

Hon. **Barry Goldwater,**
Chairman, Subcommittee on Communications,
U.S. Senate, Washington, D.C.

Dear Senator Goldwater: The Cable Television Access Coalition, Inc., a nonprofit organization working to foster public participation in cable development in Boston, wishes to submit the following comments on S. 66, the Cable Telecommunications Act of 1983.

While we appreciate your committee's efforts directed at establishing a national cable policy that fosters competition and industry growth, we feel this bill raises serious problems regarding the ability of states and municipalities to regulate cable services that do not have competitive alternatives in the marketplace. Watching the committee's hearings carried on C-SPAN, I was struck with the fallacy of Mr. Wheeler's arguments about the ability of alternative technologies to compete with cable. Each of the new technologies—MDS, DBS, STV, or LPTV—can carry at most a half dozen services, and the services carried will inevitably be the most profitable ones, such as pay movies and sports. It is unlikely that all news channels, children's programming, foreign language, educational, health care, local public affairs, or public access programming will be carried on these delivery systems.

Indeed, my very ability to watch Mr. Wheeler on C-SPAN was a direct result of the franchise agreement in the town of Lexington, Massachusetts, whose cable television system I was watching. Should that cable system drop C-SPAN, my only alternatve would be to drive to another town whose system still carried the service, since C-SPAN is unlikely to draw the mass audiences necessary to interest an MDS, DBS, STV, or LPTV operator.

The fact that cable is not likely to face competitive alternatives in its provision of special-interest, public service, or community-oriented programming raises a number of concerns with respect to the provisions of S. 66:

Section 605 of the bill prohibits federal or state restrictions on cable ownership, thus permitting cable ownership by a local broadcaster (currently prohibited by FCC rules) or a local newspaper (currently prohibited under Massachusetts law). Allowing this type of cross-ownership has the potential of reducing the number of diverse sources of local viewpoints in each community. We recommend that the option of limiting cross-ownership be kept open.

Section 606 acknowledges that public, educational, and governmental channel programmers do not have reasonably available alternatives in the market, yet that section takes away the right of municipalities to require what they feel to be an adequate number of channels for these purposes. In Boston, for instance, the current license agreement requires up to 22 subscriber channels for a nonprofit Access and Programming Foundation and one channel for municipal access out of a total of 114 subscriber channels. While the Boston license would receive protection under this section's "grandfather clause," upon renewal of the franchise the number of such channels would be reduced to nine. We urge that the 10 percent channel set-aside under this section be considered a minimum, not a maximum, and that local authorities be allowed to negotiate for more.

Section 607(a) allows regulation of subscriber rates only for the retransmission of broadcast signals and for public, educational, and governmental services. There could be no controls over rates for other cable services, such as all news, children's programming, foreign language, health care, and local origination programming—even though these services face no competitive alternatives in the marketplace. We feel that to be deregulated each of these services should face the same "reasonably available alternatives" test required of basic service programming under this section.

Section 607(b) prohibits states or municipalities from regulating the nature of cable services. This provision also apparently prohibits any requirement that cable operators make channel capacity available to leased access programmers. Inasmuch as cable's unique channel capacity makes it the only delivery service capable of carrying the range of specialized and community-oriented services described previously, the continued ability of municipalities to regulate is essential to ensure that consumers can continue to receive these services.

Section 608 restricts franchise fees to that needed to cover the cost of regulation. We recommend that, in addition to regulation, franchise fees be able to support the provision of municipal, educational, and public access programming.

While we oppose, as they are presently written, those sections of S. 66 described above, we support a number of the other provisions of the bill: We support the rights of subscriber privacy expressed in section 610 (though we do not favor preemption of the right of states and municipalities to make more stringent regulations). We support the indemnification of cable operators for all legal liability for programming not under their control, as stated in section 611. And we support the encouragement of new communications services, as described in section 3 of this bill.

Finally, we urge this committee to clarify the confusion regarding this bill's effect on franchise agreements. In the recent hearings on S. 66, Senator Goldwater implied that this bill would *not* preempt local franchise agreements in areas such as cable services and the number of access channels if these agreements responded to franchise offerings made willingly by the cable companies. Yet this view seems in conflict with the text of section 2 of this bill, which states that the Federal Government shall have "exclusive jurisdiction" regarding the matters covered by this Act, and section 4, which states that all franchise agreements must be brought into compliance with the provisions of this Act within 90 days. We ask that this committee clarify the extent to which this bill will preempt the ability of municipalities to enter into enforceable franchise agreements.

We hope the committee will consider the issues raised in these comments and amend the bill to protect the rights of consumers to services that are unique to cable television.

Respectfully submitted,

MARTIN KESSEL.

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